

[Curriehill, Sen John Skene]

DE VERBORUM SIGNIFICATIONE.

I HAVE FIRST opened and explained the occasion to the
reader to peruse this work, as it is not a treatise
of law; being a matter not pleasant in itself, nor treated
with order of before: but I have treated to do well, or attempted
that, unlike the law, it is not a treatise, but a
and commonly returns to the, as it is the pleasure
may, big upon this little ground, and the pleasure
water, be error or ignorance, I have not satisfied the desire

THE
EXPOSITION
OF THE
TERMES AND DIFFICILL WORDES
CONTAINED IN THE
FOURE BUIKES OF REGIAM MAJESTATEM,
AND UTERS,
IN THE ACTS OF PARLIAMENT, INFESTMENTS; AND USED IN
PRACTIQUE OF THIS REALME; WITH DIVERSE RULES AND
COMMON PLACES, OR PRINCIPALLES OF THE LAWES,

COLLECTED AND EXPONED BE

M. JOHN SKENE,

Clerke of our Sovereaine Lordis Register, Councell, and Rolles,

M,DC,LXXXI.

107-121

Edinburgh

Office
Law
St. Burt.
Scotland
17

"Skene"

TO THE READER.

I HAVE rather opened and schawen ane occasion to the gud Reader to perform this warke, then expounded or declared the samin; being ane matter nocht pleasand in it self, nor treated be uthers of before: Gif I have preased to do weil, or attempted that, quhilk uthers may accomplish and make perfite, the profite and commodity redounds to thee, quha at thy pleasure may big upon this little ground and fundament. Gif uthers waies, be errour or ignorance, I have nocht satisfied thy desire and expectation, *Sic erranti medicina confessio*. For ane absolute memori, and perfite knowlege, in na thing erroneus, is proper to God, and not competent to man. Quhatever I have done, I did it not to offend thee, or displease any man, but to provoke uthers to do better; alwaies for thine awin weil, be warre to reprehend my doings, flowand from ane benevolent and gude mind; except thou be assured to be reprehended of na man quha cumis after thee, and sall censure thy doings. I am affrayed of all readers, for ilk man hes his awin judgement and opinion, quhairof their is als mony contrarieties as diversities of persons. Advise therefore, and, or thou do any thing rashly, gif thou may, transact and agree with all the posteritie, that albeit thou doe alsweel as Homer in his poesie: nane of them be unto thee successor or imitatur of Zoilus: So great is the varietie of ingines and inclinations, that nane can be sure fra reprehension. Reade therefore, and make thy profite of gud thinges. Correct modestly all errours, quhilks are ignorant, and nocht wilfull. Eik all necessities omitted. Cut away all superfluties adjected. And whatever thou do, esteeme of me, as I do of thee, and of all to quhais knowlege this my little labour shall happen to cum. And swa,

Vive, Vale: si quid novisti rectius istis,

Candidus imperti: si non, his utere mecum.

LL.
6119 B 2
D26 42

FOR LAW LIBRARY
COLLECTIONS

The Library of Congress
Central Serial Record
Received

JAN - 7 1943

2005575101

ACT—ACT

**The paine
of them
quha cums
evil armed
to the
King's hoist.**

It is an kinde of that abuilzement, quhilk in Latin is called "*vestis virgata*, "*variis virgis seu aureis lineis distincta, et variegata, ut est illud Virgilii Eneid.*" "*8. Virgatis lucent sagulis.*"

ACTORNATUS Lib. 4. c. *siquis defendens* 46. *actor, alienorum negotiorum gestor*, utherwaies in the Laws of this realme called *responsalis* quha makis answer for ane uther in judgement, speciallie for the defender, Lib. 1. c. *Esto* 27. Lib. 3. c. *Placita* 12. *cum seqq.* Like as *Prolocutor* is he quha speaks for the persewer, as his forespeaker. Lib. 1. c. *consequenter* 13. Alsua *actornatus* is he quha dois ony thing in an uther mans name or behalfe, as he quha compeiris for an uther in courtes, or justice aire, to pass upon inqueistes, and serving of retoures to the kingis chapel, or to give presence for him, quha sendis him. For he wha aucht baith sute and presence in onie court, suld nocht onlie send an sutour to decide actions and causes, conforme to the law, but also suld compeir personally, or send an actornay, quhilk also he suld do, quha aucht presence allanerlie ; for ather he suld compeir, or ane actorney for him, with the seall of his armes, the quhilk all frieholders, dwelland within the schireffdome, are oblised to do, in all Schireff courts. I. 1. p. 9. c. 130. In justice aires, actornayes suld be honest and sufficient persons of discretion. Ja. I. p. 3. c. 35. and *Actornatus Justitiarum* is taken for the Justice depute quon. *attach. c. praepositus*. 61. Ass. Reg. Da. c. *nullus* 10. *Actornay* is not onlie the procurator quha is sent, but also the procuratorie or mandat quhilk is given to him, and zit they are different, for an procuratorie is commonlie maid be ane privie man ; and an Actornay, called *litera Actornatus*, is granted be the king, or onie uther havand chappell, stat. Rob. 3. c. *ult. generalie*, "*in omnibus negotiis, loquelis, et placitis motis, seu movendis.*" And therefore the Lords of Session decerned ane requisition of ane aire, anent his mariage, maid be ane Actornay, to be null ; because all sike requisitiones suld be maid be the superiour, or be ane procuratour havand speciall power to that effect.

ADJURNATUS, ane French word, summoned or called to ane certaine daie, like as *adjurnamentum* is called an summons, or *citatio, summonitio*, quhilk is defined, "*certi diei et loci exhibitio partibus, ad diem legalem, quoniam*" "*attach. c. 1. Præceptor meus Matthæus Wesenbecius in paratitl. tit. de in*" "*jus vocando. Nu. 13. definit citationem, ut sit actus judicialis, seu judicii*" "*præparatorius, quo is, quem coram sisti opus est, judicis mandato, legitime*" "*vocatur, juris experiundi causa. Et asfisa dicitur adjurnata ad alium eer-*" "*tum diem ;*" that is, continued to ane certaine daie. Lib. 4. c. "*Si petens.*" "*57, et curia dicitur respectuata,*" that is, continued or resplesited. Stat. 2. Rob. Br. c. "*Item quæcunque* 34. Chessanzus in consuetudines Burgundie "*Rub. 1. Sect. 6. verb. messiers et serients. Nu. 88. multa (inquit) sunt no-*" "*mina, quæ idem important, ut est citatio, in jus vocatio, monitio, edictum,*

“denunciatio, conventio, et aliud quod in vulgari nostro dicimus, adjurnamentum.” Adjournal is the justice aire, as ane act of adjournal, so called, because it is maid in the justice aire. *Vid. Iter.*

ADVOCATIO *Ecclesiæ* is the right of patronage, or the title and richt to present onie person to ane kirk vacand, and nocht havand ane lauchful ecclesiastical person to rule and govern the samin. Lib. 2. c. Dos. 19. Lib. 3. sequitur 30. “Dicitur autem advocatio ecclesiæ, vel quia patronus alicujus ecclesiæ, ratione sui juris, advocat se ad eandem ecclesiam; et asserit se in eam habere jus patronatus, eamque esse quasi suæ clientis loco: Vel potius cum aliquis (nempe patronus) advocat alium, jure suo, ad ecclesiam vacantem, eumque loco alterius (veluti defuncti) præsentat, et quasi exhibit.” In Kirkes. *Avowson of Kirkes.* the English lawes it is called Avowson of kirkes.

AFFIDATIO, Lib. 2. c. unde 49. In the quhilk place, *mutua affidatio* is taken for ane mutuall faith, trueth, and obligation of fidelitie, quhilk is betwixt the wife and the husband. And sicklike it signifies the mutual league, and band of fidelitie, quhilk is betwixt the over-lord, and his vassal, quha are bound and obliged *hinc inde* to uthers, quhilk is called “mutua dominii et homagii fidelitatis connexio,” lib. 2. c. mutua 68. In sick sort, that how far the vassal is bound be reason of homage to his superiour; sa far the superiour is obliged to his vassal, except reverence and honour allanerly, for the ane suld obey and serve his master; the uther suld interteine and defend his man, and the vassal suld honour and reverence his master as his superiour; but the master suld not reverence the vassal; for like as of the law, there is na soveraintie, nor impyre amangis them that are *pares*, conforme to the rule of the law, “par in parem non habet imperium;” even swa the superiour is not obliged to make onie reverence to his inferiour, bot suld receive honour fra him. “Item diffidatio, *Diffidatio.* “h. e. inimicitarum capitalium denunciatio,” (quhen ane defies an uther, and gives up kindnesse with him) is contrair to *Affidatio*; baith the ane and the uther is driven a *fide*, *vel fidelitate*: or fra ane word used in the sewes, *Faida*, *Faida,* that is battell, feid, injurie, hatred. As we commonlie say deidlie feid. And “foemina dicitur faidam non facere,” gl. in Sect. ult. de lege Conradi. li. 2. defend. be reason women be the Law are nocht subject to weirfair, to battell, or proclamation maid for that cause.

AMERCIAMENTUM, or **FORIS-FACTUM** *Curie*,—the un-law or amerciament of a court, for absence in lawfull time, for ane fault, trespas, or ony uther cause, as is manifest in the Register, in the action persued be the Theasaurar contrar the burgh of Perth, 16. Decem. 1541. The un-law in the Chalmerlains aire or court, is fiftie schillings; and twa schillings to the Serjandes of the burgh of ilke un law. The un-lawe before the Justice on the North pairt of the water of Forth, aucht Kye, ane colpindach to the Crown-er, and twa schillings to the Clerke: And in the South side of the water *The un-law of courts.*

of Forth, as in Louthian, and betwixt the water of Tyne and Forth, ten pundis, and ane colpindach, or threttie pennies to the Crouner, and twa schillings to the Clerke. In the Schireffe-court, it suld nocht exceed sextene schillings, and twa schillings to the Clerke, or ane colpindach, or threttie pennies. In the Baronne court the samin laws & un-laws suld be keiped, quhilks are used in the Schireffe-court. In the court of them quha haldis of Barrones, and are called *milites*, their un law is half of their superiours un-law. The un-law of them quha are called *subarmigerie*, is ane Kowe, ane zowe, or three schillings, *leg. Malc. Mak. c. 4.* The un-law within Burgh suld not exceed the summe of aucht shillings, *leg. burg. c. forisfactum 42.* The un law of them quha compeiris nocht in Parliament, being lauchfullie warn-ed thereto, is ten punds. Ja. I. pri. Julij, p. 4. c. 82. & p. 5, c. 99. Quhilk is like-wayes the un-law of them quha compeiris nocht in generall Coun-celles, quhilk now is altered be the newe act of Parliament, maide be Our Soveraine Lorde King James the Sexte, 29. Julij. p. 11. c. 34. Quhair it is statute that every Earle sall pay three hundreth pounds, ilk Lorde twa hun-dreth pounds, ilk Prælate ane hundreth pundes: And everie Burgh ane hundreth markes, in case it sall happen onie of them to be absent fra the Parliament.

Twa kindes
of annexa-
tion.

ANNEXTION, Ane Latine word, quhilk signifies ane fast knitting and binding, as quhen ane thing is bund or knit with ane uther, and baith as it were united togidder, and incorporate in ane. As quhen ony Lord-shippes, Landes, Castelles, Customes, Offices, Fischinges, or uther rents are annexed to the Croun, to remain perpetually their-with, quhilk is called "incorporatio, quando bona aliqua, velut terrae, rediguntur in corpus, ci, cum eorum scribitur Inventarium, manu publica, continens eorum nomina et qualitates, et ita ponuntur in numero rerum fiscalium, 1. si quando 3. ibi gl. C. de bonis vacan. lib. 10." In the Lawes of this Realme their is twa kindes of annexation: The ane quhilk may be called *tacita*, quhairin the word of Annexation is nocht expreemed, but uther words equivalent thei-ro. The uther is *expressa*, quhilk conteins manifest mention of annexa-tion or union. The first forme is used in the daies of King David the Se-cund, 6. Novem. 1257, quhair it is tatute and ordained, that al lands rents, and possessiones, quhilks of auld pertained to the Croun, or the King's domaine and propertie, suld all and haill, and perpetuallie, remaine in the hands and possession of the King, for his sustentation and living, without ony alienation thei-rof. And sick-like, 27. Septem. 1367. with consent of the three Estaites, it was statute, for the Kingis better sustentation and living, that all rents, fermes, kanes, customes, forrests, offices, and ther emolumentes quhat-sum-ever: And also all landes, alsweil the propertie, and uthers, in possession quhai-rof King Robert I. father to King David the

second, deceased as of fe; and that all possessions and landes quhilke pertained to the richt and propertie of the Crown, the time of the said King Robert, or of King Alexander the third, or of the said King David the second, suld returne all and haill to the Crown, with all advocations of Kirkes, and all service pertaining theirof; to remaine perpetuallie with the Crown, nocht-withstanding onie alienation theirof, maid to onie person; and that na disposition theirof be maid thereafter, without consent of the three ESTATIS. And gif onie person had onie of the saides landes laboured with his awin pleuch, it was ordained that he suld paie alsmeikle ferme and dewtie therefor, as the samin micht gudlie paie, or as onie uther lands as gud, and alsmeikle used to pay. And siklike all the great and small customs, and burrow mailles of the Realme, are ordained to abide and remaine with the King, till his living, be an act maid be Ja. I. Parl. 1. c. 8. Of the second forme of Annexation quhairby landes, possessiones, and uthers, *per expessum*, are annexed, united, and incorporate, diverse and sindrie examples are extant in the actes of Parliament of King James the II. 11. Par. 4 Augt. c. 41. and of uthers maid theirafter. Landes and uther dewties, or possessions quhatsumever annexed to the Crown, being annaied or disponed, na lauchful dissolution maid theirof, it is lesume to the King, nochtwithstanding the said alienation, to put his hande to the saides landes, and take them back again to the Crown, *brevi manu*, without onie order or process of law. And as concerning the proffites theirof, quhilke are extant "pendentes et non dum consumpti," the time of the said intromission, the king, or his comptroller, maie intromit therewith, in the samin maner as he maie intromit with the landes, "Jure soli, quia fructus pendentes et extantes censentur pars soli." And tuitching the fructes, and proffites of the landes quhilke are spended and consumed; the king and his comptrollar aucht and suld repecte the samin frae the possessoures, and uptakers of the saides fructes, of all zeires of their intromission therewith, be waie of action, because they are consumed and spended. Quhilk deed consistand *in facto*, suld necessarlie be proven be ordinar waie of action. To the quhilk hail proffites the King hes gud richt, in respect that of the Law, "malæ fidei possessor" can never acquire and conqueis to himselfe, onie fructus or proffites, ather extant or consumed. And true it is that al they quha receives ony infeftment or unlauchful disposition of the King's annexed property, ar "malæ fidei possessores;" they receiving the samin against the manifest law of this Realme, the ignorance quhairof excusis na inhabitant of the samin. And mair over, trew it is that the foresaid forme of intromission with the Kingis annexed landes, and repetition of the proffites theirof, hes bene in use and practik sen the making of the actes of Parliament theiranent; Likeas in the beginning of the reign of King James the fourth, 18. Jan. 1488, the landes and Lordship of Brechen and Nevar were taken fra David Earle of Crawford, and ane term assigned to proove against him, the avall of the mailles and dewties of the said landes with the pertinents, intromitted with

The second kinde.

Landes annexed and nocht dissolved may nocht be analied. Of the profits of landis annexed, wrangeous lie analied.

The King's
property
wrangous-
lie analied.

Annexation
is perpetual.

be him, sen the time of the gift theirow. Item, the King may introupe with his annexed propertie, and profites theirow, quhidder he be major or minor. For gif their be na lauchfull dissolution of the samin, he is aye as it were minor anent his said propertie. Al annexations ar perpetuall, and induris continnallie, ay and quhill ane lauchfull dissolution be maid be onie King: Induring the time of the quhilk dissolution, the annexation ceases and sleepis, and the dissolution being ended be decease of the maker theirow, the said annexation begins to quicken *et quasi reviviscere*; in sick sort that the King quha succeidis to the maker of the said dissolution may set na fewes of his annexed propertie, be vertew of the dissolution made be his predecessour, bot mon make ane new dissolution to the effect foresaid. Quhilk fault and vice I finde in divers and sindrie infestmentes of the propertie; and specially in the minoritie of King James the Fifth, quhilks are wrangeously given be vertew of the dissolution maid be King James the Fourth his father. Vid. *Dissolutions*.

Ground
annuel.

Top an-
nuell.

Few an-
nuell.

The an-
nuell of
Norway.

ANNUEL, ane word used in the practick of this realme, for ane zeirelie revenue or dewty, payed at certain termes, ather legal, quhilks are called "termini legales vel legitimi," prescribed and appointed be the law of this realm, sik as Martinmes and Whitsunday; or conventional, as pleasis the parties till agree and appoynt, be paction and contract, as betwixt Zule and Candlemes, or onie uther time. In the actes of Parliament maid be Queen Marie, 4. Parlia. 29. Maij, c. 10. mention is maid of ground annuell, few annuell, and top annuell, quhairow I have red nathing in onie uther place; and am incertain quhat they do signifie, bot referris the samin to the judgement and opinion of the reader. Alwaies ground annuell is esteemed to be quhen the ground and property of onie land, bigged or unbegged, is disposed and annallied for an annuell to be paid to the annalier theirow, or to ane uther person, sik as onie chaplain or priest. Top annuell is ane certain dewtie, given and disposed furth of onie bigged tenement, or land, of the quhilk tenement the propertie remains with the disponer, and he is only oblised to pay the said annuell. Few annuell is ather quhen the few maill or dewtie is disposed as ane yeirly annuell, or quhen the land or tenement is sette in few-ferme heritable, for ane certain annuell to be payed *nomine feudi-firmae*. The annuell of Norwaie, quhairow mention is maid in the actes of Parliament of King James the Third, and in the Register of this Realme, was an annuell of the summe of an hundred markes, sterling money, quhilk the Kings of this realme was oblised to pay yearlie to the King of Norwaie, for the cause after specified. Because Donald Bane, brother to King Malcolm Canmoir, wrangeously, after the decease of his brother, usurped the richt of the Crown again t his brother's sones, Edgar, Alexander, David, and uthers: And for help, and supplie, gave all the Iles of Scotland to the King of Norway, quhairthrow, and for uther occasiones, monie bludie and cruell battells followed, untill the battell of Largea, 3-

August, 1263, in the time of King Alexander the Third, and Ache King of Norway; quha thereafter, in the samin zeire, 22. Januarie, departed in Orkney. And the Scottis beand victorious, Magnus, the fourth of that name, King of Norway, sonne to the said Ache, maid peace and concorde with the said King Alexander in anno 1266, and renuned, quite-claimed, and discharged all richt, or title, quhilk he or his successors had, or micht have, or pretend to the Iles of Scotland: The King of Scotland payand theirfoir yeirlye to the said Magnus and his successors, ane annuell of ane hundreth marks Sterling money. Quhilk contract and agreeance was ratified and confirmed be Haquinus King of Norway, the fifth of that name, and Robert the first, King of Scotland, in anno 1312. Bot at the last the said annuell, with all the arrierages and by-runnes thereof, was discharged, and renuned *simpliciter*, in the contract of marriage betuixt King James the third, and Margaret, onlie daughter to Christianus the first, King of Norway, Denmark, and Sweden, 8. Septemb. 1468. Quhilk discharge is nocht onelie ratified, bot also renewed thereafter be the said Christianus, 12. Maii. 1469. And likewise the said King James the third, 24. Fe. 1483, commanded his Ambassadors send to the Paip, to desire confirmation of the said perpetuall renunciation, and discharge of the contribution of the Iles.

ARAGE, utherwaies average, from *Averia*, quhilk signifies an beast, as sal be hereafter exponed: And swa consequentlie Average signifies service, quhilk the tennent aucht to his maister, be horse, or carriage of horse, 18. Jan. 1501. John Stewart contrair William Blair. In the act of Parliament, Ja. 4. p. 2. c. 10. it is written Avarage. And likewise in the indenture at Perth, pen. Mart. 1371, betwixt Robert Stewart Earl of Menteith upon the ane part, and Dame Isabell Countes of Fife, on the uther part, it is plainly written, *cum Avaragiis et Cariagiis*. In the quhilk indenture, the said Isabel, dauchter and aire to Duncane Earl of Fife, and spouse to Walter Stewart, brother to the said Robert, in the time of her Widuitie, after the decease of her said husband, oblished her to resigne the said Earldom of Fife, in the Kingis hands, in favour of the said Earle, for new heritable infestment thereof, to be given to him. The quhilk indenture is subscribed be Joannes Rollo, quha was secretary to the said Earle; and conforme thereto, resignation was maid: for the quhilk scho received zeirlye, for her sustentation, an hundreth fourtie five pounds sterling money. Like as also the said Isabell, 22. Junii 1389, resigned *ad perpetuam remanentiam*, in the hands of King Robert the third, the Barrone of Strathurd, Strabraun, Discher, Toyre, with the Isle of Tay, lyand within the Schiereffdome of Perth. The Barrone of Cowll, and Oneil, with the fortalice theirof, and patronage of the Sundrie Kirk of Kincardin, within the Schiereffdome of Aberdene, the Barrons of Crumdail, and Affin, within the Schiereffdome of Innernes, the landis of Strahovie, and Abrandolie, within the Schiereffdome of Bamf, the landis of Logyachry, within the Schiereffdome of Perth, the Barronie of Calder, with-

Isabella
Countes of
Fife.

Sundrie
Lands per-
teining to
the Crown.

in the Constabularie of Linlithgow, and Schireffdome of Edinburgh, and the landis of Kellynsyth, within the Schireffdome of Striviling. This I thought gud to advertise the reader how the Earledome of Fife and uther landis foresaids, pertained to the Crowne. Duke Murdo sonne to the said Earle of Fife, being forefalted, and that he King James the First, 1424, the said Earldome was decerned to remaine perpetuallie with the Crown, like as it dois, as ane speciall pairt of the annexed propertie. As also the Lordship of Methven, within the Schireffdome of Perth, and the barronie of Kellie, within the Schireffdome of Forfar, did fall in the handes of King Robert the first, be done of forefaltour pronounced against Schir Roger Moubray Knicht.

ARRENDARE, ane Spanish word, commonlie used in chartoures and infeftments of this Realm, in Latin, "locare seu rem aliquam utendam, fruedam, non gratis, sed certa mercede interveniente concedere." For, conforme to the French, rent is ane certain dewtie, as annuell-rent, and *arentare*, and theirfra "arrendar, quasi ad certum rentum seu redditum dimittere," to set and give lands or tenements to onie man for an zeirlie duetic.

ARRERAGIUM, or properly *Arrieragium*, ane French word, *arrier*, backward: in Latine *retro*, as *jamaïs arrier* used be the Earls of Angus, in their armes, to quhom it perteins to fecht the Kingis wantgard, as of auld it did appertain to Makduffe Earle of Fife, as writis Hector Boetius. *Arrieragium firmarum*, signifies the by-run annuel, mails, fermes, profits or dewties of onie tenement, or landes, the quhilk restis upon the samine unpaied, "quoniam attach. c. si tenementa. 27. Leg. Burg. c. si quis voluerit. 156."

- 1 ASSISA, ane French word, quhilk signifies properlie sitting, or Session, and hes divers uther significations in the Lawes of this Realme, for *assisa* is taken for ane constitution, ordinance, or law. *Lib. 3. c. sequens. 23.* quhair it is called *recognitio*. And *lib. 1. c. si non 23.* mention is maid of ane essonzie, or excuse, conforme to the Law and assise of the land. And *assisa* is called ane
- 2 constitution, law or statute. *lib. 4. c. die lunae. 13.* as *assisa regis David Stat. Alex. c. assisa 18.* And *assisatum* signifies statute, or ordaned, *St. 2. Ro. Br. c. Item ordinatum 26.* King David maid an assise, or constitution of him quha was accused in judgement, and clenged, for the death of his wife, *assisa Reg. Da. c. si quis velit. 33.* *Assisa terrae* is taken for the law and constitution of the land, *Lib. 4. c. si vir. 16. c. sciendum 64.* *Assisam infringere*, is to violat and transgres the law. And *assisa* of King James the First, of weichts and measures maid at Perth, 11. Mart. and the first zeire of his reigne. *Juxta assisam lib. 2. c. dicitur autem. 74.* is conforme to the law, or *Juxta legem*, is conforme to
- 3 the time prescribed be the law, *Lib. 3. c. sequens. 33. in fin.* Item *assisa* is called ane measure, or certaine quantity, as the barrell bind of Salmond suld keepe and containe the assise and measure of fourteene gallons. *Ja. 3. 1.*

Octob. Parl. 14. c. 110. and all Salmond suld be packed in barrels, of the measure of Hamburgh, after the auld assise, and na smaller barrels nor vessels. Ja. 3. 6. August. Parl. 10. c. 76. *Assisa balecum*, the assise herring, signifies ane certaine measure, and quantitie of herring, quhilk perteinis to the King as ane pairt of his custumes, and annexed propertie, Ja. 6. p. 15. c. 237. For it is manifest that he suld have of everie Boat that passies to the drave, and slayis herring, an thousand herring of ilk tack that halds, viz. of the Lambmestak, of the winter tack, and of the Lentrone tack, in December 1516. The King's Advocat contrair William Harper, and his Colleges. Item the Kingis rents of assise is interpretit to comprehend the Kingis Lands and custumis, 9. Decemb. 1466, and 11. Mar. 1500. In the action betuixt James Ogilbie contrair Patrick Gray, certain oxen was poynded for sundrie unlawes, and for the rent Assise aucht to the Kingis Hienes for the blench farms of the lands of Airlie. And siklike the third of the Kingis rent of the Assise, that is to say, the lands and custumes, suld perteine to the Queen, as hir dowrie, Ja. 3. 9. Octob. p. 1. c. 2. In this realme an Assise is called ane certaine number of men lauchfullie summond, received, sworn and admitted to judge and decerne in sundrie civil causes, sik as perambulations, cognitions, molestations, purpresture, division of lands, serving of brieves, and in all and sundrie criminal causes. For, be the law of this Realm, all crimes suld be decided and tryed be ane Assise, *Stat. Alen. c. 3.* Quhair of their is twa kinds. Ane ordinarlie in use, quhilk may be called ane litil Assise, of the number of 13 or 15 persons, *lib. 3. c. generalia 25.* The uther called ane great Assise, quhilk consists of 25 persons, *lib. 1. c. poena. 16. lib. c. 2. dos. 19.* and all the Assisers, in baith the ane and the uther Assise, suld swear ane solemn aith, to judge and decerne richtly, *vid. bona pat.* For the quhilk cause they ar called *Juratores*, *lib. 1. c. poena 16.* and in sum buiks *assisa* is called *jurata patriae*, and in the English lawes an jury. The great Assise (quhilk is not commonly used in this Realm) is chosen against sik persons as hes bin upon an litil Assise, and ar accused *de perjurio vel temerario juramento*; and that they have done wrang against the laws in clenging onie trespassor quha is guilty and fowle of the crime. In the quhilk case, the man that is clenged, albeit wrangously, cannot be filed againe or punist; for he being anis quite, he is ever quite for that crime; bot the assisors may be accused of their wrangous deliverance. J. 3. p. 8. c. 20. N. c. 63. The great Assise suld be of 25 persons, nobill and gentil men. And the Lords of the Session, upon the first daie of Junij. 1591. declaired all them to be esteemed, halden, and repute as Nobil persons and gentilmens, that sal happen to be summond upon sik an assise, quha are landed-men, albeit they be inferior in rank and dignitie to them upon quhais assise they suld passe.

ATTAYNT, *Taynt*, an word meikle used in the English lawes, *Attayntus*, is accused, filed or convict, for ony crime or cause. *Stat. 2. Ro. Br. c. Item 9. c. Item dominus 21. c. Item 24.* An Judge being convict, or attaynt of taking of

budds, or of partialitie, suld be punished at the Kingis wil, and tine his office, *Stat. 2. Ro. Br. c. dominus rex. 22. Stat. 1. Ro. Br. c. Item quod nullus* 8. J. 5. p. 7. c. 104. Bot attaynt or *Taynt*, is called the deliverance or probation of 24 (*alias* 25) leill men, the quhilk may be called an great assise, *lib. 1. c. poena, 16.*

ATTACHIAMENTUM, from the French word *attacher, ligare, nectere*, ane charge or binding of ony person, to the effect he may be drawn and compelled to compeir in judgement, and answer as law will. In the preface and beginning of the buik called "*quoniam attachiamenta, attachiamentum dicitur quoddam vinculum legitimum, per quod pars defendens invita astringitur, ad standum Juri, et respondendum parti de se conquarenti juridice.*" And *attachiament* sumtimes is of guds and geare, as in contractes, conventiones, and actiones of moveabill gudes, in the quhilk the gudes and geare of the defender are attached, untill he find caution and pledges to answer as law will, quhilk being funden, the *attachiamente* is relaxed and lowsed. Sumtimes *attachiament* is of ane mans person and body, as in actiones of wrang, or criminall causes. In the quhilk the person of the transgressour suld be first attached, and gif he be disobedient, or fugitive, his gudes and gear may be attached, untill he find caution to underlie the law. Swa commonly, but not perpetually, "*attachiamentum vel est bonorum, vel corporis, sicut arrestamentum bonorum,*" as gif the Crouner can nocht apprehend onie man indited, to attache him personallie to compeir in the Justice aire; then he suld arriest all his gudes moveable and unmoveable, to remain under sure pledges, and to be furth cummand to the King, in case he compeir not, *L. Malc. M. k. c. 1.* And in criminal causes, speciallie in treason, the person or bodie of the defender suld be first attached, and put in sure firmance, untill he have tholed an assise, quhidder he be quite or foule. *I. 2. p. 12. c. 49.* And in civil causes, the guds and geir of the defender suld be first arrested. *Li. 4. c. 1.* as writes *Matthaeus de afflictis, in consuetudines Siciliae, constit. Humanitate, Nu. 33.* Be the civil law, in execution of decreites, first the moveabill gudes perteing to the debtour suld be first discussed, thereafter his lands and immoveabill gudes may be comprised. Thirdlie, the debts auchtand to him, quhilks are called *nomina delitorum*, may be persewed and discussed, *L. a Divo Pio. 15. Sect. 3. De re Judicat.* Quhilk is conforme to the act of Parliament, quhairby it is statutc, that the lands perteing to the debtour suld nocht be comprised, untill his moveabill guds be first searched, socht, and discussed. *Ja. III. p. 5. c. 36.*

AVERIA. *Li. 4. c. si quis sederit. 23. c. quicumque. 31. ass. Reg. Da. c. si quis sederit 41.* In the quhilk place it is called *melius animal*, the bestaucht, from the French, *le meilleur anoir*; quhilk be the law is given be the husbandman to his maister, as an herezelde, and *lib. 4. c. quicumque 31. averia* is called

animal: The quhilk place is *de namatione animalium*, that is of poynding of cattle.

AVUNCULUS properly is the mother-brother, bot sumtime, conform to the French manner of speach, it is taken for the father-brother; in Latin *patruus*, *Li. 2. c. si quis liberum* 24. *c. deficientibus* 34. *de judic. c. Item nota* 15. "In quibus locis jus successionis dicitur pertinere ad avunculum ejusque liberos, quod non est consentaneum juri nostro civili, si avunculus proprie accipiatur pro fratre matris, quia cognatorum, *b. e. consanguineorum*, ex parte matris apud nos nulla est successio, *b. e. cognati non succedunt aliis*."

B

BAGIMONT, his taxation of benefices, *Ja. III. p. 6. c. 43. Ja. IV. p. 4. c. 39*. The Pape, in the time of King James the Third, sent in this Realme ane Cardinall and Legat, called Bagimont, quha did mak an taxation of all the rentalls of the benefices, that the samin might be knawin to the Pape: To the effect, that when onie person came to Rome seikand bulles or richt to onie benefice fra him, he might, conform to the said rentall, as he pleased, sell the samin for sa-meikle silver or golde as he thocht maist profitable. Quhilk taxation is grounded upon the Canon Law, in the *Extravagant. suscepti regiminis lib. 6*.

BAIRMAN. *Vid. Dyvour*.

BALLIVUS, an French word, *Baillif*, ane baillie or judge, *Li. 1. c. 10. c. 31*. quha hes ane ordinar power and jurisdiction. "Nam ballivus sive judex non potest esse arbiter," *Li. 2. c. 4. Ballia*, in Latin *provincia*, ane baillerie or jurisdiction, *Li. 1. c. 7. c. 18. stat. 2 Rob. Br. c. 4. c. Robertus* 28. "Dicitur autem Ballivus a Baall, *b. e. domino*, quia ballivi dominantur suis subditis, quasi earum magistri et domini, *Rebussus in constit. regias, de sentent. execut.*" art. 7. gl. 1. And in the Chequer compts, the baillies of burrowes are properlie called *ballivi*, quha be the lawes of this realme makis compt zeirlie in the Checker, of their burrow mailles, as ane part of the Kingis annexed propertie, and also of their common gude, quhilk suld be employed in the necessar affairs of the burgh. And lkewaies in the Checker, compt is maid of the King's propertie, be sik as are called *Ballivi Regis*, and intromettis with his rents: quhais compts are called, "computa Ballivorum ad extra Scil. Extra Burgos;" and are improperly called *Ballivi*, being chalmer. *Computum Ballivorum ad extra*. lanes in-put and out-put be the comptroller, for quhom he suld be answerable. Mairover, in the Checker compt, maid *per rotulos*, is quhen the compt is charged in his compt conforme to ane former compt, rolled of before:

Computum
per rotulos
et extra ro-
tulos.

And *computum extra rotulos*, is quhen the compter is charged in his oneration be ony precept direct be himselfe, or be ony intromission maid be him of the Kingis rents, before the making of his compt, or with onie dewtie silver, or uther thing perteing to the King extraordinarie, and not zeirlie, as ane parte of his patrimonie.

BANRENTES, *Banerets*, Ja. I. Par. 7. c. 101. In the quhilk place, it is manifest that Banrent is an kind of estaite, greater and mair honourable than Barrones: For the Barrones are permitted to chuse their Commissioners to be sent for them to Councell and Parliament, to propone all and sindrie needes and causes, perteing to the commounes, in the Parliament or general Councell: Bot the Ban-rentes suld be warned be the Kingis special precept, to compeir personallie in the Parliament or Councell: In sik manner as Bishoppes, Earles, Lordes, Abbots, Priores, usis to be summoned. This worde is commonly used in the English Lawes, and in sindrie lawes of uther cuntries. "Cuia, l. 2. de Feud. Tit. 7. de nova fidelitatis forma. Boerius in decisiones Burdegalenses. Tract. de autoritate magni Consilii. Guido "Papae quest. 614. et 326. jus Normand. l. 5. c. 2. Nu. 7. Zasius de Feud. "Tit. qui Feudum dare possunt." Some calls Ban-rents them quha hes Baner rent, and divided in sundrie partes. Uthers callis them quha hes the rent or zeirlie dewtie of ane Baronne. And siklike, some understandis them quha beiris the Kingis baner in hes hoist and armie: quhilk office and honour perteins heritable and allanerlie to the Constable of Dundie, the Kingis baner man. But all men, when they are belted and maid Earles, are called Baronne Banrent, and Lords of our Soverain Lordis Parliament: Quhair-ly it is manifest that the said dignitie is common to manie, and nocht proper to ane man: And therefore seeing Zasius, in the place foresaid, writis, that Ban-rent is ane dignitie concerning weir fare; I think, in my opinion, that Ban-rents are called Chevaliers of armes, or Knights, quha for obtaining of great honoures, dignities, or riches, hes power or priviledge granted to them be the King, to raise and lift up ane Baner, with ane companie of men of weire, either herse-men or fute-men, quhilk is nocht lesum to ony Earle or Baronne, without the Kingis speciall licence, asked and obtained to that effect: as *Henrie Pasquier Advocat. lib. 2. des re cerbes de la France c. 9. fol. 100.* provis be mony and sundrie argumentes of the Historie of France. And Doctour Thomas Smith, ane learned man, in his buike anent the commoun weill of England, Lib. 1. c. 17. sayeth that Knights Banrentes ar maid in the field, with the ceremonie of cutting of the poynt of their standerd, and making of it as it were ane banner, they being before Bachelers, are now of ane greater degree, allowed to display their Armes in ane Banner, in the Kingis hoist and armie.

BANNITUS, Banished for onie crime or uther cause. *Bannum* signifies an trumpet, in Latin *tuba*, as writes *Alciatus, l. 2. parer, c. 2. ex Precopio l. 4. belli*

Perici. And be the commoun use and consuetude of this realm, quhen onie person is banished, or put to the horne, the same is done with three blasts of an horne, or an trumpet. And for that effect, it is statute and ordained that the Kingis maire, or serjand, sall have ane horne and wand. Ja. 1. p. 7. c. 99. For with the horne he denounces men rebelles, and with the wand he receives them to the Kingis peace, quhilk therefore is commonlie called the wand of peace. "An Bannitus possit impune offendi in corpore et bonis." Vid. Chessanacum in consuetud. Burgund. R. 2. Sect. 1. ver. confiscationis. "Nu. 7. cum seqq."

BARO, Ane Barronne. *Zasius de Feud. Tit. qui feudum dare possunt*, writes con- Dux.
forme to Cornelius Tacitus, *Libro de Germania*, that Dux, or ane Duke, is the Governor of ane Province or armie. Comites or Earles are they quha are assessoures to the Duke or Prince, swa called *a comitando*, because they ac- Comes.
companie the saidis Dukes, and never passes out of their presence.

Marchiones, ar Marquesses, Wardaines, or Keepers of the Bordoures: For Marchio:
Mark, Marche, in Latin *Limes*, and *Murk-grave* in Dutche, is *Comes Limitaneus*; and all Marchiones dwelling on the Bordours or Marches of the Cuntrie. As in this Realme the Earledome of March, quhilk perteinis to our Sovereine Lord, as ane part of his annexed propertie. Bot *Comes Mar-*
tialis, or Earle Martiall, is ane man of dignitie or jurisdiction, "a marte, vel Comes
Martialis.
"bello;" because the jurisdiction of weir-fare perteinis to him. *Alciatus libro de singulari certamine*, c. 32. affirmis, that like as the Earle is inferiour to ane Duke, swa ane Baronne is inferiour to an Earle: And that *Baro* cummis fra the Greek word *Baγus*, *gravis*, wise, grave, prudent, and discreet; Bot contrarie wise, *Petrus Pitboeus, Lib. 1. Adversariorum*, writis, That *Baro* signifies ane baird, fuile, or unwise man. Quhais opinion I cannot gudlie approve.

"Baldus in Cap. Innotuit de electione, definit Baronem, ut sit quisquis
"merum mistumque habet imperium in aliquo castro vel oppido, ex conces-
"sione principis." In this Realme he is called ane Baronne quha haldis his landes immediatlie in chiefe of the King, and hes power of pit and gal-
lous.

BARRATRIE, or *Barrataria*, ane kinde of Simonie, especiallie in obteining the richt of benefices. *Socinus reg. 55. Baldus in consilio 21. Parl. 5.* Fo all men passand to Rome and buyeand benefices commits Simonie, and are called *Barratoures*. Be quhome *Barratrie* is committed, and quhat is the paine thei of, it is manifest be the actes of Parliament. It is ane Italian word, and be the Italiane interpretours of the civil Law, *Barrataria* is quhen ane Judge, corrupted be buddes (sik as gold and silver), judgis wrangeouslie, "Petrus de Raven. singula, 156." and swa doing selles Justice for meid and profite, and makis his office readie to be bought be him quha will give maist theirfore. "Angel. de Syndicatu. Nu. 4." For the quhilk crime he may be

deprived and sharpelie punished. "Bartol. 1. l. Maevia. 13. Sect. 1. nu. 2. de " annu. legat." And likewaies *Barrattours*, in the Laws of England, suld nocht be suffered to make sute, or to give judgements, or pronounce sentence or domes, anno 3. Edward 1. c. 32.

BASTARDUS, in French; *Bastard*, an bairne unlauchfullie gotten outwith the band of Marriage. Quhilk word is barbarous, and (as I suppose) na reasone can be given quhairfore it is so called. Bot Gabriel Palæotus, in his buik "de nothis, spuriisque filiis," c. 18. alleagis it to cum fra *Bastaris*; quhilk signifies ane huire, or common woman: Be reason that bastards are commonlie gotten and procreat with sik weemen; in Greeke he is called *νόθος*, for *να νόθα* signifies that part of the fathers gudes and geare quhilk, be the law of the Athenians, leasumlie might be given be the Father to his bastard sonne, extending to the summe of *mille drachmae*, and theirfore *νόθος* was called all that was not trew or lauchfull, as writes "Budaeus in Pandectas." And swa *νόθος* cum fra "νν, privativa particula, et Θεον, h. e. *divinum*, " teste Suida." Because he wantis that quhilk is godlie and lauchfull, that is, ane honest and lauchfull birth, or parentage. And swa "*νόθος* dicitur " qui non sit legitimus," to the quhilk their is na proper Latine word correspondent, as Quintillianus testifies, lib. 3. c. 6. Nevertheless, he is commonly called *Spurius*, for in l. 1. ff. 'de posses. contr. tabul. Spurii dicuntur *παρὰ τὴν σποράν*, h. e. *satione*, vel *seminatione*, eaque vaga, et promiscua, ubidoctiores *σποράδην* legunt, quasi *sparsim concepti*, "like as they are called " vulgo concepti. l. in adoptivis. 14. de ritu nuptiarum." Likewise *Spurius* was the proper name of ane man amongis the Romaines, as Titus, or Caius, and was written with two letters Sp. and likewise they quha had na certaine Father, was designed with the saids twa letters, S. and P. And swa, be common use and consuetude, "Spurii dicebantur sine patre," as writes *Plutarchus in problematibus*, because their father and mother nocht being lauchfullie married, they have na certaine Father: "quia pater dicitur quem " legitimæ nuptiæ demonstrant, l. 5. ff. de in jus vocand." And it is alike to have na father, and to have incertaine Father, as we say, he quha will have monie Gods, hes na God. "Postremo Blondus, lib. 8. Romæ triumphantis, " is (inquit) qui illegitime natus esset ex concubina vel scorto, contumeliæ " causa, *spurius* dicitur, eo quod Sabini, muliebri pudendum *σποράν* appella- " runt: hæc ille inhonesto originis genere in lucem editos, infami et inho- " nesta appellatione notare voluerunt veteres." And that part of weemens claihts, sik as of their gown, or petticoat, quhilk under the belt, and before, is open, commonlie is called the spare. As concerning the succession of bastards, thir schort rules are to be observed, conform to the law and practique of this Realme. First, na bastard, nor na person, nocht procreat and gotten in lauchfull marriage, may onie waies be lauchfull aire and successour to onie of our Sovereine Lordis lieges, lib. 2. c. in custodiis 50. for be the law of God, Ismaell being bastard, gotten upon ane bound woman Agar, haeres.

micht not be aire to Abraham, with Isaak. Genes. 21. 10. Because all richt of succession is be reason of bluid and consanguinitie of the Father side, quhilk is called *jus agnationis*; and thirfra ane bastard, quhais Father is incertaine, be the law is understand, be reason of bluid, to be sib to na man, and nane to him, "ut ubi nullus est pater legitimus, ibi nulla est agnatio aut successio ratione agnationis."

Secondlie, the bairnes maill, or female, lauchfullie gotten be ane bastard, with ane lauchful married wife, succedeis to him as righteous and lauchfull aires, in his lands, gudes and geare, in the samin manner as gif their father had been gotten and borne in lauchfull band of marriage, "quia filius est haeres legitimus, quem nuptiae demonstrant. lib. 2. c. in custodiis 50."

Legitimi bastardorum liberi ipsis succedunt.

Thirdlie, gif the lauchfull bairne, maill or femaill, of ane bastard, succedeis to him, and thereafter deceisis without lauchfull aires gotten of his awin bodie, or without lauchfull brother or sister, and lauchfull testament and latter will maid be him, all and haill his lands, guds and gear, nocht being disponed and analied be him in his lifetime, aucht and suld perteine to the King, be the priviledge and richt of his Crown: Because, as said is, there is na richt of succession in this Realme be the Mother side, and the sonne or dauchter of the bastard deceasand, as said is, hes na persone sib to him be his Father side: And swa all richt of succession ceasand baith upon the Mother and Father side, "tam ratione cognationis, quam agnationis," the King, be reason of his Crown, is universall successour to him in his lands, guds and geare, as *ultimus haeres*.

Fiscus succedit filio vel filiae Bastardi.

Fourthly, ane bastard being *legitimat*, or not *legitimat*, may in his lige pousty, and induring his lifetime, annalie and dispone his landes, gudes and geare, moveable and unmoveable, to quhom he pleisis, in the samine forme and manner as onie person gotten in lauchfull bed may do be the law.

Bastardus res suas alienare potest, tanquam liber earum dominus.

Fiftlie, all gudes, moveable and unmoveable, of ane person borne bastard and deceasand bastard, without lauchful aires gotten of his bodie, and na disposition theirow maid in his time, pertains as escheite to the King, be reason of the richt of his Crown. "Lib. 2. c. quaeri autem. 51. leg. forest, c. si bastardus, 50. de judic. c. si bastardus. 54."

Fiscus succedit bastardo.

Sextlie, Ane bastard being naturalized or *legitimat* be the King under the Great Seal, be the practique now used and observed, has allanerlie power to make testament, dispone his moveable gudes and geare, and nominate executors, conforme to the Law of this Realme: be the quhilk Law, na man lauchfullie or unlauchfullie gotten or borne may make onie disposition in his testament, bot of his moveable gudes allanerlie. For na man upon his death-bed, or in his latter-will, without consent of his aire, may dispone onie part of his heretage. "Lib. 2. cap. potest 21. cap. cum-quis, 36."

Bastardus legitimatus potest testari legitime.

Seventhlie, gif ane bastard *legitimat* and rehabled in his life-time, makis ane testament lauchfullie, the King thereby is excluded fra all richt and intromission with his moveable gudes: Bot gif he makes ane testament quhilk is null and unlawfull, or gif he makis na testament, the King, be

Testamentum illegitime factum non excludit fiscum.

reason of bastardie, succeedis to him in all his moveables and unmoveables. For in this case, the effect and power of the legitimation ceasis, and hes na operation.

Bona mobilia Bastardi fisco deferruntur.

Auchtlie, quhen ane Bastard deceisis without ony lauchfull testament maid be him, or not havand aires lauchfullie gotten of his bodie, the King, be his Thesaurer, or ony uther havand gift and power fra him, may intromet with all the moveable gudes quhatsumever, perteing to the Bastard, the time of his decease, and not disponsed be him in his lifetime, as escheit perteing to his Hienesse, be reason of his Crown and Kinglie power.

Bona immobilia, D. N. tenta, fisco inferuntur.

Ninthlie, Sick-like all landes and tenements pertaining to the said Bastard, the time of his decease, and halden immediatlie of our Sovereine Lord in Chiefe, after his decease perteinis to the King; and the propertie thereof, be decease of the Bastard, and be reason of escheite of Bastardie, belanged to the Crown, is consolidat with the superiority in the Kingis person; in sik forme and maner, as gif the Bastard in his life-time had maid resignation thereof in the Kingis handes.

In aliis bonis immobilibus Rex habet jus praesentationis.

Tenthlie, Concerning landes and heretage, perteing to ane Bastard, not halden of the King, bot of ane uther superiour, Spiritual or Temporal, the King hes richt of presentation: Be the quhilk, after the decease of the Bastard, he may present ony person quhom he pleases, as heretable tennent to the Bastardes immediat superiour, be his letter under the quarter seale, beairand, That for-sa-meikle as N, borne Bastard, and deceasand bastard, without onie aires lauchfullie gotten of his body, and na lauchful disposition maid be him in his life-time, had the landes called B. perteing to him, in heritage, halden immediatlie of the said superiour: And his Hienesse being willing not to prejudge the superiour, anent his superioritie; therefore, presentis to him sik ane man, charging the superiour to receive him, and give him sik infestment of the landes, as the umquhile Bastard had of him of before.

BERTHINSEK, or Birdinsek. Be the Law of Birdinsek, na man suld die, or be hanged, for the theft of ane scheepe, ane veale, or for sa meikle meate as he may beare upon his back in ane seck: Bot all sick thieves suld pay ane scheepe, or ane cow, to him in quhais lande hee is taken: And mair-over suld be scurged. "Lib. 4. c. De Yburpanan seca. 14. quoniam attach. c. per constitutionem. 44. Ass. Reg. Da. c. 1. In fine. Stat. Alex. c. de Berthinsek. "19." Quhilk is conforme to the Civil and Cannon law. "Nam omnia delicta et maleficia aestimantur voluntate, et proposito delinquentis. L. qui injuriae. 53. In prin. ff. de Furtis L. 1. ff. de Var. et extr. Crim. Ideoque si quis necessitate famis sedandae, egestate, aut paupertate coactus, rem alienam contrectat, quia non adest animus furandi cupidus, excusari potest, c. si quis. Extr. de Furt. non enim factum, sed causa faciendi inspicitur. l. Verum. 39 ff. de furti. Et vulgo dici solet, necessitatem non habere legem. L. Non solum † Vlt, de excusationib. Tutor.,

BLUDUEIT, Uyte in English, is called *Injuria, vel misericordia*. Ane unlaw for wrang or injurie, sick as blood: For they wha ar infest with Bludueit, hes free libertie to take up all unlaues or amerciamentes of Court, for effusion of blood; and to hold Courts thereupon, and to apply the samin to their awin utilitie and profite.

BONA PATRIA, *Lib. 1. c. si vero. 29.* Ane assise of cuntrie-men, or of good nichtboures: Sometimes it is called *Assisa bonae patriae*, quhen twelve or mair men ar chosen furth of ony part of the Cuntrie, to passe upon Assize, quha are called *Juratores*, because they suld sweare judiciaillie, in presence of *Juratores*, the partie, ane solemne aith. *Lib. 1. c. Post hoc. 14. Jam. 1. P. 13. c. 138.* in The aith of this manner following: We sall leill suth say, and na suth conceal, for na the assisors, thing be may, sa far as we are charged upon this Assise, be God himself, and be our part of Paradise, and as we will answer to God upon the dreadfull day of judgement.

BONAGIUM, or *Villanagium*, slaverie, or servitude: For *bondi, nativi*, and *Bondi, Nativillani*, signifies ane thing. " *Lib. 2. c. consequenter 13. cum seqq. Bondi,*" *tivi.* be reason of their bond and obligation, as bound and oblised men. *Nativi*, be reason of their nativitie and birth, as borne men within the land. " *Qua- " si ascripti glebae,*" That is depute, destinate, or ordained be their master to dwel and remain upon the land, for keiping and labouring thereof. " *Lib. " 2. c. Pluribus 14.*" And therefore utherwaies are called *Villani*, be reason of Villanie. their office, in sa far as they have the cure of Villages, and landwart husbandrie, committed to them. " *Bondagium per anteriores crines capitis.* *Bondagium per anteriores crines.* " *quoniam attach. c. de brevibus. 31. 15.*" quhen ony free man renuncis his libertie, and makes himselfe ane bond, or slave to ane great man in his Courte, and makis tradition, and delivering of himselfe, be giving ane grip of the haire of his forehead, to the effect he may be mainteined and defended be him thereafter. The quhilk bond men, gif they reclaime to their libertie, or happen to be fugitive fra their maister, may be drawen back againe be the Nose to servitude: Fra the quhilk the Scottish saying cummis, quhen ane boastis and menacis to take ane uther be the nose. And it is leasum to ony man to sell his libertie; bot gif he dois, he may never recover the samin. " *Assis. Reg. Da. c. Quilibet 12. quoniam attach. c. quilibet, 56.*" To this the Civil Law is conforme: " *Nam his qui ad precium particidandum se venditari passi sunt, ad libertatem proclamare non licet. L. 1. ff. quib. ad lib.* " *Petrus Pithaeus lib. 1. Adversariorum,*" makis mention of ane kind of adoption, " *per comam sive capillos,*" quhen ony person tuike ane grip of ane uther mannis haire, and did cut it: Quhairby the ane became the Father adoptive, and the uther the Sonne adoptive.

BORCH, ane cautioner, pledge, or sovertie, *Ja. III. Par. 14. c. 99.* In *Borgh of Latine fide-jussor.* *Vid. Free Borgh, vid. Plegius.* *Borgh of Ham-hald, De Ham-hald.*

Maritag. c. Sciendum, 17. Ane caution or sovertie used in byeing and selling, quhilk the seller findis to the byer, to make the gudes furthcummand, as his awin proper gudes, and to warrand the samin to him. For it is statute, that na man sall bye ony geare, except the seller thereof finde him ane lauchfull pledge: quhilk is called Borgh of Ham-halde. And gif it sall happen the gudes sald and bocht to be challenged bee an uther, and the said pledge cannot finde him for quhom he is pledge to relieve him of the said pledge, he sall pay to the challenger the triple of the thing challenged; and aucht kye to the King, as ane un-law. And gif he quha faund the said pledge, relieves him not from the said damage, he sall be banished the realme, *Lib. 1. c. Statuit etiam* 19. *St. Alex. c. Statuit etiam* 13. For generally the cautioner hes gud action contrair the principall for his relief, *Lib. 3. c. 1. In fine*. And siklike within burgh, the like caution suld be found in byeing and selling of all merchandice, except meate and drinke, and uther things of small consequence. *Leg. Forest. c. Nullus* 48. "Et de jure civili venditor per evictionis praestationem cogitur servare emptorem indemnem, eodem modo ac si dominium nactus esset. L. exempto. N. in prin. ff. de actionibus emp. Vid. Hambaldare. Vid. Hamsuken." Mair-over, gif ony man becommis ane furth-cummand borgh for ane uther, to make him furth-cummand as ane haill man, it is sufficient gif he produce him personalie, haile and sounde, before the judge, in lauchfull time and place. Bot gif he be pledge for ane uther, that he sall be answerable as law will, he maun satisfie for him in Court, and to the partie to whom he is pledge, in all thinges, as the principall suld have done. *Quoniam attach. c. ubi aliquis* 11.

BOTHNA, *Buthna, Botbena*, *L. 4. c. Si quis namos* 30. appearis to be ane Parke, quhair cattel are fed and inclosed, "Ut in Libro M. Alexanderi Skene, fratris mei Germani, quondam in supremo Senatu Advocati." Quhilk is confirmed be Hector Boetius, *l. 7. c. 123, Nu. 35*. "Cum scribit maritimam Thessaliae partem a vectigali, quod Regiis procuratoribus ab incolis in annos pendi solitum erat, cum gregum multitudine abundarent, Buthquhanium appellata, est enim, quhain, ide quod vectigal, prisca Scotorum lingua: et Buth, oviu collectio; haec ille." And it is manifest, that the place in the quhilk the zowes are inclosed quhen they are milked, is commonly called an Bucht. Siklike Aulus Gellius, *l. 11. c. 1. writis*, that Italy is so called a *Bubus*, because *Italio* in the auld Greek language signifies Oxen, of the quhilk there was great abundance and multitude in Italy, quhilk is confirmed be Paulus Vanefridus, *lib. 2. c. 24*. "Italia (inquit) ab Italio, Siculorum duce, qui eam antiquitus invasit; sive ob hoc Italia dicitur, quia magni in ea boves, h. e. Itali habentur, ab eo namque quod est Italus, per diminutionem, una litera addita, altera immutata, vitulus appellatur." Item bothena, Stat. Wilh. *c. 11*. signifies ane Barronnie, Lordship, or Schireffdome, as is manifest, "Ex Libro Sconens. *c. 99. Assis. Regis David*." "Et Dominus Bothenae," is the Lord of the Barronnie, land, or ground;

Italic.

“ Leg. Port. c. I. in Libro M. Willielmi Skene, fratris mei, Commissarii Sancti
 “ Andreae, p. 149. c. 79.” Item, it is statute and ordained, that the Kingis
 Mute, that is, the Kingis Court, or ilk Bothene, that is, of ilk Schireffedome,
 sall be halden within fourtie daise, “ Ass. Reg. Da. c. 6. in Libr. quondam M.
 “ Roberti Carbraith, I. C. Doctissimi.”

BOTE, Ane auld Saxon worde, signifies Compensation or Satisfaction; as
 man-bote, theif-bot; and in all excambion, or cossing of landes or geare
 moveable, the ane part that gettis the better, gives ane bote or compensa-
 tion to the uther. Quhairof there is an example “ in § Si familiae, instit.
 “ de Offic. Judic. et id § quaedam actiones. Instit. de actionibus.” Ane
 man-bote is assithment for the slauchter of ane man. Kin-bote, for the ^{Man-bote.}
 slauchter of ane kins-man. Theif-bote is quhen ony man agries with ane ^{Kin-bote.}
 thiefe, and puttis him frae the law, I. 5. 12. Jul. Par. c. 2. Or quhen ^{Theif-bote.}
 ony sellis ane thief, or finis with him for theft-dome done, or to be done, Ja.
 I. Par. 13. c. 137.

BOVATA TERRÆ, ane oxen-gate of land. “ Li. 4. c. Si quis sederit 23.”
 Quhilk in sum buikes is wrangeouslie written, *Davata terra*. The Lordes of
 the Session, be their decreete, 18 Julii, 1541, esteemed and modified an
 Oxen-gate of land to twenty shillings in all dewties zeirly. Bot in this I
 finde na certain rule; for some land is mair fertill, and uther mair barren;
 Alwaies ane Oxen-gate of land suld containe threttene acker; and four
 Oxen-gate extendis to ane pound land of auld extent, conform to the de-
 creetes given be the Lordes of the Checker. 11. Mar. 1585. Patrik
 Monypenny of Pilrig, and uthers, contrair Adam Bishop of Orkney. And
 at the instance of John Creichtoun of Bunnstoune, contrair John Fen-
 toun.

BREVE, Ane commoun worde in the lawes and practique of this
 Realme; and also in the civil law, “ Lib. 1. c. De exactorib. Tribut. Lib. 10.
 leg. ult. c. de conveniend. fisci debitorib. Lib. 10.” Quhair, in the Glosse,
 it is called *Schaedula*, ane schoft compendious write: Likeas all brieves are
 conceived in few words, and are alsua called *Brevicula*. And in “ Rubr. C.
 “ de sentent. ex periculo recitand. Alciatus Lib. 1. Dispunct. cap. 21. Et Ja-
 “ cobus Cuiacius, Antonio Contio repugnante, Legunt ex Breviculo, id est, ex
 “ scripto breviori formula concepto.” Because the sentences and decreetes
 of Ordinar Judges, suld be red and pronounced in writ. *Breve testatum* is ^{Breve testa-}
 ane writ or iustrument, subscribed be an Public Notar; or be twa wit-
 tum.
 nesses, quha are called “ pares curtis, vel curiae, h. c. convassalli;” quha baith
 halds their land of ane superiour. “ Cuiacius, Lib. 1. et Lib. 2. Tit. 3.
 “ De feud.” In the auld lawes of this realme, diverse and sindrie brieves ^{Brieves now}
 hes been used and wonte, quhairof mention is maid, Quon. attach. c. de ^{in use.}
 brevibus 31. and in sindrie uther places. Bot seven formes of Brieves allan-

arie are now commonlie used. The first, the brieve of Mortancestric. The second, the brieve of Tutorie. The third, the brieve of Idiotry. The fourth, the brieve of Terce. The fifth, the breive of Line, or lineation of landes and tenements within burgh. The sext, the brieve of Division. The seventh, the brieve of Perambulation. Quhair of the three first brieves are answered, and retoured again to the Chancellarie; and the uther foure receives na retoured answer. The cause of the diversitie depends upon the forme of the brieves direct furth of the Chancellarie. Because the three first brieves in the end of ilk ane of them conteinis an command to the judge, to quhome they are direct, to send back againe his answers to ilk pointe of the brieve: And the remnant foure brieves hes na sik command; and therefore requires na answer.

BREVE de divisio faciendis, is the brieve or summons of cognition or molestation anent the propertie and commontie of Landes, anent the bounds, meiths, and marches theirow, betuixt neighbour and neighbour. Quhilk be the new act of Parliament suld be decided be an assize, before the Schireffe and his deutes. Ja. VI. p. 11. c. 42. It maie be likewaies called the brieve of division, or of perambulation, or onie uther concerning the marches of landes. Lib. 2. c. dicitur 74.

BREVE de nova dissasina, quo. attach. e. de brevibus 31. is the brieve or summons of ejection or spuilzie. For *dissasitor* is he quha ejectis ony man furth of the possession of his landis, without ordour of the law, as writis John Rastel, verb. dissasitor. And *nova dissasina* signifies alsua spuilzie, maisterful, wrongous, or violent spoliatio, and away taking of moveable guds and gear, 22. March, 1547. William Lindsay contrair Alex. Cheyne. "Molinaeus in "stilo curiae Parliament. part 1. c. 10. c. 18." affirmis that "nona dissasina" is that quhilk in the civil law is called "interdictum unde vi," and comprehends also "interdictum uti possedetis." And in the Law of Normandy, Li. 8. c. 3. it is called "interdictum recuperandae possessionis." Vid. Dissasina.

BREVES pleadable, *breve placitabile*, are all sik brieves quhilks are persewed and defended be ane ordinar form of proces before ane competent judge, at the instance of ane persewer against ane defender. For it is statute, that na man sall be ejected furth of his land or tenement, quhairin he alledgis him to be vest and saised, bot be an brieve pleadable, or sum uther brieve accordand theirow, and that the said person be lawfully summond to answer upon his heritage, at ane certain day and place. Stat. 2. Rob. Br. c. Item 25. quhilk is conform to the acts of Parli. Ja. III. p. 6. c. 41.

BREVE de recto, the brieve of richt was used before the Justice Generall and his deutes in decision of the ground, richt, and propertie of lands, and

Reduction of infestments, the quhilk forme of proces is declared at length, in the first buike of *Regiam Majestatem*, and in *quo. attach. c. de. brevibus. 13.* and be the Lords of Councell and Session is decerned nocht to have bene, nor zit to be thir mony zeires in use, and therefore they find themselfe, conform to the institution of the Colledge of Justice, and jurisdiction granted to them, to be judges competent in all causes of heretage, vlt. Februar. 1542, Patrick Weems contrair Forbes of Reres.

BREVE *de morte antecessoris*, the brieve of *Mortancustrie l. c. 2. generalia, 25.* Or the brieve of succession, or of consanguinitie, *de iudicib. c. Natura, 158.* Or *breve inquisitionis.* Stat. Rob. 3. c. 1. Or the brieve of inquest, Ja. 4. p. 6. c. 49. Albeit, all brieves are inquisitions, because they are determinat "per inquisitionem patriae, de iudicib. c. cum quis. 152." Or the brieve of recognition, "breve recognitionis," Stat. 2. Rob. Br. c. Item quia, 23. It is the maist necessar, common, and profitable brieve or inquisition that is used be the lieges of this realme, quhairby ane desiris to be served and retoured as nearest and lauchfull aire to his father or uther predecessour. This brieve is raised furth of the Chancellarie, and persewed be ane appeirand aire of per-
 fite age, for recovering of his landes furth of his superiours handes, togidder with all the proffites and commodities theirow, "leg. forest. c. et si haeres
 Brieve.
 "71." The raiser of the brieve at the samin time suld find caution to persew and follow the brieve, and his claim conforme theirow. "Lib. 3. c. generalia, 25." Be the auld law of this Realme, the Justice-generall and his
 The Judge.
 deputes haveand jurisdiction nocht onelie in criminall causes, bot also in civil actions, was judge competent to the service of this brieve. "Quo. attach. c. de brevibus. 31." Bot now the samin is served before the Schireffe, Stewart, Baillie, or onie uther judge havand power and jurisdiction. Stat. Rob. 3. c. 1. Or before judges delegat be commission, granted be the Lords of Councel, for the serving of the said brieve. Ja. 5. p. 6. c. 82. The brieve suld be proclaimed upon fiftene dayes warning exclusive. That is upon fiftene
 Proclama-
 daies, nocht comptand the daie of the service of the brieve to bee ane of tion.
 them, be sik persones as hes power, be their office or commission, to proclaim the samin, in ane lauchfull, publick, and convenient place: That is to say, in the principal Burgh of the Schireffedom, Balliery, or uther place quhair the landes lies; at the mercat croce theirow, and in mercat time of daie, before twa witnesses at the least, to the effect that the knowlege their-
 of may cum to the audience of all parties havand or pretendand entres their-
 intill; and theirow the breive suld be lauchfullie execut and indorsate be
 Indorsation,
 the officiar, executor theirow, and stamped with his seale or signet, before the samin be presented in judgement. Stat. Rob. 3. c. 1. l. 1. p. 9. c. 127. l. 4. p. 6. c. 94. l. 6. p. 11. c. 60. In registro, 16. No. 1537. It is necessar and
 also lesun to the Schireffe, or onie uther Judge of this brieve, to summond
 Assize suld
 certaine persons maist worthy within his jurisdiction, to passe upon the assize, be summon-
 and that upon the space of fiftene daies, or zit gif he pleasis upon ane ed.

Verification
of the
brieve.

Defender.

An assise is
chosen.

Continua-
tion of the
brieve.

The claime
Service ne-
gative.

schorter time, and gif they be present in the tolbuith unsummoned, it is leasum to the Judge to compell them to passe upon the said inque. Ja. IV. p. 6. c. 94. And all sik persones summoned and nocht compeirand, ar charg- ed at the barre, and disobeyand, suld bee decerned in ane unalaw and amer- ciament of court; the brieve beand lauchfullie proclaimed, and the persons of inqueist like-waies summoned, and the daie of compeirance being cum, the persewer exhibitis and presentis the brieve dewlie execute and indorsate, in judgement to the Judge, and desiris him to cause the samin be red, and put to the knowledge of an assise: Thereafter the officiar, executour of the said brieve, be his great aith, sall sweare judiciallie that he did execute the samin brieve, conforme to the indorsation thereof in all poyntes, and the witnesses insert there-in-till sall also make faith that they heard, saw, and bystude, quhen the said officiar did execute and proclaime the brieve, in sik manner as is contained in the indorsation thereof: The brieve and indor- sation being swa verified, gif ony person havand entresse compeiris to defend and object against the brieve, he suld have inspection thereof, gif he desiris the samin: And gife he proponis ony relevant exception, declinatour, dela- tour, or peremptour, hee thereby castis and annullis the brieve, either until ane new brieve be raised again, or *simpliciter* in all times cumming; utherwais, gife he hes na reasonable exception or defence to stop the brieve, the samin sall passe to the knowledge of ane assise. "Quoniam attach. c. de brevibus. " 13."

Then certaine lauchfull menne maist worthie, and qua beste knawis the veritie, to the number of thretteene or fiftene, ar chosen in judgement, in presence of the persewer and defender, or in presence of the persewer, and in absence of the defender, knawin to have entresse, and being lauchfullie summoned, and nocht compeirand, to the said election, to object against sa many persones, as he may leasumlie stop be the law, to passe upon the assise; For like as it is necessar that he be anis summoned, swa gif he compeires nocht, being lauchfullie summoned, the brieve suld receive processe, and passe to the knowledge of ane inquest, at the desire of the persewer, in absence of the defender. "Lib. 3. c. Generalia. 35. ass. Reg. Da. c. sciendum est. 44. lib. " 4. c. Si petens. 57." Quhilkis persones, na lauchful objection maid against them, suld be received, sworne, and admitted: And, therefore ar called "Ju- " ratores. vid. Bona Patria." And gif they, or onie ane of them, be sworne and received, the Judge may continue the brieve to an other daye, gife he pleasis, and as necessitie requiris; utherwaies the continuation thereof is nocht leasum, without the consent of the partie, after the claim is given in, and inquisition taken in the cause, gif the persones of inquest, being weill councelled and advised, deliveris and servis *Negative*, in favoures of the defender, and findes the persewer na waies nearest and lauchfull aire to him quha died last veste and saised in the landes acclaimed: In that case, the defender dois bruik and joyis the possession of the said lands, and the per- sewer is debarred and secluded therefra. But gif the assise deliveris and ser-

is *negative* as said is, or *affirmative*, in favours of the persewer against the de- Service affir-
fender, conforme to the claim in all poyntes: This their answer to all and mative.
sundrie the pointes of the brieve, sealed with all their seales, or of the maist
part of them, togidder with the seale of the Schireffe or uther judge closed,
and the brieve inclosed therein (to the effect the same may be conferred with
the answer), is sent back and retoured to the chancellarie, conforme to the Retour.
Kingis command, contained in the end of the brieve. Stat. Ro. III. c. 1.

Quhilk therefore is called ane retour. And it is to wit, that there is twa Twa Kinds
kindes of retoures, or answeres, maid be the persons of inquest to this brieve, of retours.
and retoured to the Chancellarie: The ane is generall and the uther speciall:

The general is, quhair na landes or tenements ar speciallie acclaimed or sought, Generall re-
be the persewer of the brieve: Bot onelie it is desired that he may be served toure and,
and retoured generallie nearest and lauchful aire to his predecessour; To aire.

the quhilk generall claime ane generall retour is maid, be vertue quhair of
the said generall aire hes gude richt and title to all contractes, obligationes,
and reversiones, and to the moveable aireschip gudes quhilkis pertained to
his predecessour, and were not discharged or dispoed before his decease, in
his liege poustie: And sik-like, he may persew and defend quhatsumever
action competent to him, be decease of his saide predecessour, to quhom he
is served aire generall. 8. March 1540, James Scot, contrair Blair.

The special answer and retour is, quhen the persewer of the brieve claimis Special re-
speciall landes, and the persones of inquest givis ane particular and speciall tour.

answer to ilk speciall poynt of the brieve. l. 16. 4. c. *statuit Dominis* 45. The
quhilk is direct and sent to the directour of the Chancellarie, to be tryed be
him gif the samin be conforme to the direction and ordour of the brieve in
all poyntes. Here is to be understand, that the landes contained in the re-
tour ar halden immediatlie of our Soveraine Lord the King, or of ony uther
superiour. Gif the landes be halden of the King in chief, the directour
of the Chancellarie commandis his Clerkes to direct ane precept, under the
testimoniall of the great seale, called the quarter seale, in quhite Walx, to
the Schireffe of the Schire quhair-in the landes lyis, commanding him to
give saising to the person retoured, or his Actourney, of the landes contained
in the retour; And to take securitie of the mailles and dewties of the
landes, sa lang as they ar retoured, to have bene in the handes of the King,
or his Predecessours, be reason of warde, or non enteresse, quhair of ane
memoriall is made in ane buike called, *Responde. Vid. Responde.* Gif the lands
retoured be halden of ane uther immediate superiour than the King, the

Of lands re-
toured, hald-
en of an
uther supe-
riour.

directour of the Chancellarie directis ane precept, charging the superiour to
give saising to the person retoured of all and sundrie the landes contained in
the retour: He doand to him therefore all quhilk he is oblised to do be the
Law: Quhilk precept, gif the superiour dissobeyis, beand required personal-
lie, or at dwelling place, to obey the samin, and for verifying thereof, ane
authentick instrument reported to the Chancellarie, then the second pre- The second
cept, called *Memimus*, is direct to the saide superiour, beand in effect that precept.

The third
precept.

The fourth
precept of
the schireff.

Twa maners
of tinsell of
superioritie.

Precepts of
saising given
conforme to
retoures be
commission.

the King remembrand, that of before he gave command to him to give sais-
ing: quhilk command as zit is nocht obeyed, quhairof he mervailis: And
therefore zit, as of before, chargis and commandis the said superiour to give
saising to the person retoured, of the landes contained in the retoure. And
gif ane uther authentick instrument be reported to the chancellary for veri-
fication of the superiouris disobedience the second time; The third precept,
called *Furcha*, is direct, commanding him to give the said saisng, or uther-
wais, gif he disobey, the king certifies him that he will direct his uther pre-
cept to his schireffe to give the samin. In the execution of all thir three pre-
cepts, it is not necessar that the superiour sall be personally apprehended.
But it is sufficient gif he be sa charged in the execution of any ane of them.

The third precept and charge being likwayes disobeyed, and the samin dis-
obedience lawfully verified, as said is; ane precept is direct furth of the
chancellarie, to the schireff and his deputes of the schire within the quhilk
the landes retoured lyes; Makand mention, that the King hes given com-
mand be his uther letters, to N. Barron and his deputes, that he without de-
lay suld give saisng to the person retoured, or his attorney, of the landes con-
tained in the retour; quhilk gif he dois not, he commands and chargis the
schireff to give saisng of the saids lands with the pertinents without delay,
saifand ilk mans richt. Quhilk precept being obeyed be the schireff, and
saisng given conforme theirt; the superiour who was three times charged
of before, and refused, be reason of his disobedience, tynis and forefaults the
superiority of the lands quhairof he refused to give saisng induring his life
time. Quhilk superioritie sall pertain to his immediat superiour, quhidder that
be the King or ony uther. And after his decease, his aire being served and re-
toured to the superioritie of the samin lands, recoveris the said superioritie
quhilk his father did tyme throw his disobeydience. And sa be the law and
practicque of this realme, ane superiour may tyne and forefault his superiori-
tie. First, quhen he is entered and saised in the superioritie, and being
charged be precepts of the Chancellarie, refusis to receive his vassall and
tennent served and retoured to the property. In the quhilk caise, be reason
of his contempt and disobedience of the Kings precepts and command, he
tynis the superiority, induring his lifetime, without any declaratour, or de-
creit of ane judge. Secondly, quhen the superiour is not entred nor saised in
the superioritie, and is charged, be the Lords letters raised be his vassall, to
enter within fourtie dayis thereto, to the effect he may enter to the proper-
tie. The quhilk fourty daies being by-past, at the instance of the vassall,
he may be decerned, be decreit of the Lords of the Session, to have tynt his
superiority, and to satisfie the partie grieved. Ja. III. p. 7. c. 57. And in
baith caises foresaid, the vassal, or tennent, sall be entred and hald of the

King, or the uther immediate over-lord, to him quha contempnandly dis-
obeyed. Last of all, concerning the giving of saisng conforme to brieves
served and retoured before the judges commissioners, the forme and ordour
of the Chancellary above written suld be keeped and observed, and gif the

landes retoured be halden immediately of the King, the precept of saising suld be direct to the schireff and his deputes. For the Lords auditors of the Checker statute and ordained, 8. Aug. 1528, that in time comming, the clerke of the Chancellarie, upon the brieve served be an commission, sall direct the precept of saising to the principal schireff of the schire, and make the responson upon the schireffs head, notwithstanding the said commission, quhilk is ordained allanerly to have effect anent the serving of the brieve, and not anent the giving of the saising. And true it is, that all saisings past upon precepts of the chancellary suld be given be the schireff clerke or his deputes, for the quhilk the schireff sall answer. Ja. V. p. 6. c. 77. Mar. p. 6. c. 34.

BROCCARII, *In statuto gildæ*, signifies lockers, brockers, mediatours, or intercessours, in onie transaction, pactiō, or contract, as in buying and selling, or in contracting of mariage. In the civil law they are called "*Proxenetæ*." Lib. 1. & tot. tit. de Proxenetis.

BULLION ane French word, *Belon*, signifies uncunzied silver or gold, quhair of silver or gold is or may be cunzied or stricken; sik as *Balluca*, in Greek *Χρυσάμεινος*, *b. e. aurea arena, quæ ex terra effoditur*, lib. 1. c. de metallar. l. 11. In the English lawes it is called *Plate*. In the acts of parliament of this realme, it is statute and ordained, That merchands sall bring hame bullion; quhair anent the Lordes of Checker maid this ordinance,—At Edinburgh the 10. day of Janua. 1597. In the presence of the Lordes of Checker, compeired personally the Provost, Baillies, and Thesaurer of Edinburgh, with certaine merchands their nichtbors, and gave in their supplication, desiring the A. B. C. of bullion to be explained, and an solide order to be taken with the express quantities of bullion, quhilk they sal be astricted to pay presently, and in all time heireafter. After consideration quhair of, and conference had at length with them, upon the particularities concerning the said matter of bullion, the saids Lordes of Checker, with consent of the saids Provost and Baillies, for themselves, and their remanent nichtbors, and merchands of this realme, hes statuted and ordained, that all merchands sall inbring and pay in all time coming, for ilk last of hydes, sex ounces bullion: For ilk last of salmond, four ounce bullion: For ilk four hundreth claith, four ounce bullion: For ilk serplaith of woolle, four ounce bullion. And for all uther waires and merchandice transported be them furth of this realme, for ilk serplaith of gudes, or sa-meikle as payis ane serplaith of fraucht, the said merchant sall pay four ounces of bullion: And untill mair perfite knowlege be had of the just quantitie of the serplaith, ordainis twa tun fraucht to be compted to the sek: And twa sek fraucht to the serplaith: And the said bullion to be in-brocht to the cuinzie-house be the merchandes: And payment to be maid to them for the samin, conforme to the act of parliament maid there-anent, upon the nineteenth day of December last by-past.

Ane A. B. C. of the Bullion, set downe be the Lords of Checker, for gudes transported furth of the Cuntrie, and declared be them to be conforme to the Acts of Parliament, and the Acte of Checker, above specified, 13 February 1597.

| | | | |
|---|---|---|------------------------|
| The last of drinking beare | - | - | ij. ounce brunt silver |
| The last of Quheate | - | - | iiij. ounce |
| The last of Beare | - | - | ij. ounce |
| The last of Malt | . | . | iiij. ounce |
| The last of Rye, and Rye Meale | . | . | ij. ounce |
| The last of Kiling, Codlinge, and Ling | . | . | ij. ounce |
| The last of Oile | . | . | ij. ounce |
| The last of Orkney butter | . | . | ij. ounce |
| The last of Herring | . | . | ij. ounce |
| The last of Salmond | . | . | iiij. ounce |
| The last of Saipe | . | . | ij. ounce |
| The last of Asse | . | . | ij. ounce |
| The last of Pick and Tarre | . | . | ij. ounce |
| The last of Lint and Hemp | . | . | ij. ounce |
| The last of Irne | . | . | ij. ounce |
| The last of Copper containing 14. schip pund | . | . | ij. ounce |
| The last of Hart hides, dry hides, and salt hides | . | . | vj. ounce |
| The tun of Wine | . | . | i. ounce |
| Ilk four hundreth of claith | . | . | iiij. ounce |
| Ilk seck of schiep-skinnes conteining 500 | . | . | ij. ounce |
| The serplaith of lamb-skinnes conteining 8000 | . | . | iiij. ounce |
| The serplaith of cunning-skinnes conteining 16000 | . | . | iiij. ounce |
| Ilk serplaith of futfelles conteining 4000 | . | . | iiij. ounce |
| Ilk seck of gait-skinnes conteining 680 | . | . | ij. ounce |
| Ilk three chalder of salt | . | . | i. ounce |
| Ilk hundredth of dailles | . | . | i. ounce |
| Ilk last of Narvis talloun | . | . | ij. ounce |
| Ilk tunne of lead | . | . | i. ounce |
| Ilk four chalder of coales | . | . | ij ounce |
| Ilk three hundredth of drie fisch | . | . | ij. ounce |
| Ilk thousand ling or killing in peil | . | . | vj. ounce |
| For ilk four cradill of glasse | . | . | ij. ounce |
| For ilk seck of woole conteining xxiiij stanes | . | . | ij. ounce |
| The last of wax, conteining iiij schip pund | . | . | ij. ounce |

BURLAW, Byrlaw. Lawes of Burlaw are maid and determined be consent of nichtbors, elected and chosen be common consent, in the courts, called the *Byrlaw* courts. In the quhilk, cognition is taken of complaints betuixt nichtbour and nichtbour, lib. 4. c. The quhilk men sa chosen, as judges and arbitrators to the effect foresaid, are commonly called *byrlaw* men. It is an Dutch word, for *baur* or *baurman* in Dutch, is *rusticus* an husband-man. And sa *byrlaw*, burlaw, or baurlaw, *leges rusticorum*: Lawes maid be husband-men, concerning nichtbour-heid, to be keeped amangs themselves.

C

CADROW, quhairof mention is maid in the act of Parliament printed 1568, Ja. II. 4. An. 1434, c. 41, wrangously, for *cadzou*, because furth of the barony of *Cadzou* an zeirly pension or annuel-rent of 26 pound 13 schil. 4 pen. was payed to the King in the checker, as is manifest in the Schireff-rolles, Ja. II. 1456; and likewaies in the Schireff-rolles, Ja. III. 1487, in the quhilk roll the barronny of *Cadzou* is called *Hammilton*, and in divers uthers rolles.

CANUM, Canna. In sindrie charters and infestment of lands, specially halding of the kirk, is commonly used for the duty and revenue quhilk is paid to the superiour, or lord of the land, and specially to bishops, or kirkmen, quhidder it be quheat, beir, aites, or uther kinde of victuals; salt, or summes of mony, as is manifest, *ult. Feb. 1509*. The King contraire the L. of Balmonth. Zit nevertheless, the lands of Kilconquhair, liand within the schirefdome of Fyfe, are retoured to be halden be service of ward and relieve, payand an certain sum of silver, *nomine cani*, to the B. of S. Andrews. Quhilk to be weill done I cannot affirme; for it is certain that all lands halden *nomine cani*, payis ane certain sum of silver, or some uther certain duty, particularly expressed in the infestment. Sa gif that maner of halding be like to the halding be service of ward and relieve, of necessitie the samin mon be ane taxed ward, and during the time thereof, the tennent suld pay na mair but the particular sums or duty contened in his infestment. *Canum* appeirs to be an Irisch word, for *Keane* signifies the head, as King Malcolm Kenmoir, *grandis Capite, vel capito*, great head; and likewais *kain* or *Chan*, is called tribute, payed be the servand or subject to the maister, as I have red in ane auld authentick register of the bishoprik of Dunkeld, quhair it is called *Gban* or *Gbanum*. And amangis the Romanes there was twa kinds of tribute; ane real, quhilk was impute be reason of the quantity of the landes and guds immoveable, quhilk is called “jugatio, quod pro modo jugerum” “imponebatur, l. 9. C. de agricol. et censil. lib. 11.” Ane uther personal, quhilk was enjoyned to the person; and is called “capitatio, quod pro ca-

“pate hominis præstatur, d. l. 9. cum l. seq. et ibi gl. l. sacro sanctæ, 8. C. de sacrosanct. eccles. l. ult. C. de annon. et tribut. lib. 9.” And in the Evangel, “licetne dare censum Caesari ? Theod.” Beza interpretis, “licetne dare capitationem Caesari ?” Aulus Gellius, and uther Latin writers, makis mention of them quha was taxed be the head or pow. In Latin *capiti censiti*. Sa this word *Cane* signifies the head, or rather tribute or dutie, as *Cane* fowles, *Cane* cheis, *Cane* aites, quhilk is payed be the tenant to the maister as ane duty of the land, specially to kirk-men and prelats, quha in the time of their greatness and supremacie used ane forme and stile, divers from uthers ; and the auld form of precepts, given in the time of King Robert, zit extant, anent the inbringing of the K. rents, conteins “censum, Cana, “reditus, custumas.” And change of wol, or hyds, is taken for the custome theirow, “le. navium fol. 171. in li. M. Willielmi Skene, commissarii Sanct. “andrea fratris mei germani.” Specially, quhilk is given for the mending and up-halding of the haven for schips, “leg. burg. c. ult. in lib. Carbraith.”

CAMPIONES, ane word commonly used in singular battell : For in auld times, quhen controversies and debates culd not be utherwise decided bot be singular battell, the parties did either fecht in proper person, or conducted and fied for wage uthers to fecht for them. Quha was called *campiones*, because they faucht in *campo*, or in the fields, *de judic. c. 93*. Albeit sumtime they did fecht in the K. palace, lib. 4. c. stat. 38. and sometime in the common streits, “quo. attach. c. apud Dumfries, 59. stat. Alex. c. apud “28.” from the quhilk consuetude cummis the common saying, “Do thou richt, do thou wrang, cheis thou a champion strang ;” for this is the law of Scotland. Because in all actiones and quarrels decided be champions in singular combat, that partie did win the cause, quhais champion was victorious ; and he quhais champion was vanquished and overcum in battel, did tine his cause. *vi. Duellum gladiatores, or duellatores, are forbidden, l. unic. C. de gladiatoribus.*

The paine
of him quha
is convict in
battell, or
break the
Kings pro-
tection.

CATALA, an French word, *Cbattle*, as is commonly taken in the lawes of this realm, for all guds and geare moveable, “li. 2. c. cum quis. 52. c. usu-
“rarii, 53. c. 55. ubi res mobiles dicuntur catalla ;” and likewise in the lawes of Normandy, gudes moveable signifies all things, as possessions quhilkis may be removed fra ane place to an uther, and commonly are called cattel, as horse, claith, gold, silver, and uther sik things, li. 5. c. 1. l. 8. c. 1. Like as *hereditas*, or heritage, signifies all lands and immoveable guds in the said law of Normand, li. 8. c. 1. And also in the lawes of this realme, “li. 2. c. 53. “stat. gild. c. item quod quicunq. 19.” and “leg. burgh. c. si contigat. 104.” Gif ane burges deceas without an testament, his aire, and his cattel, sal be in the keiping of the kinsmen of the mother side, called *cognati*. And his heritage in the keiping of his kinsmen of the fathers side, called *agnati*.

CATHORIUS, *Catherius*, quhat it signifies I cannot weil declair, alwaies Cantherius. it is equivalent to the valor of 9. Ky, "St Alex. c. apud. 28. quo at. c. apud " 59;" quhair it is statute, that gif ony person beis convict in singular battel, or utherwaies of breaking of the K. protection, or peace, he sall give to the K. "viginti duas vaccas, et tres cathorios, vel pro quolibet cathorio novem "vaccas." It is true, that *cantherius*, in Latin, signifies an gelded horse; fra the quhilk cums the Latin proverb, *cantherius in fasta*, against them quha being unable, and not qualified, seiks and cravis offices, quhairin they can do na mair service nor a horse or horseman can do, being inclosed within an fowse; and siklike *cantherius in porta*, quhen ane horse being led furth of the stabill, in the port, or in the beginning of his journey, snappers or fallis with his maister: The superstitious peopill esteemed that to be ane evill presage of the journey.'

CARRUCATA *terræ*, Ane French word, for *charrou*, is ane pleuch; *aratrum*, and conteins alsmeikle an portion, or measure of Land, as may be tilled, and laboured within yeire and daie be an pleuch, lib. 1. c. dos. 19. Utherwies in the same place it is called *bilda terræ*, vel *bida terræ*, quhilk is ane worde *Hida terræ*, used in the auld Briton Lawes.

CARTA *extensa*, or *extenta*, Ane chartour quhilk conteins ane disposition of lands, with certaine meithes and marches, utherwaies called an bound and chartour, "quon. attach. c. stat. dominus rex. 62. ass. reg. Do. c. statuit "per consilium, 36. Stat. Wilb. c. 7."

CAUPES, Calpes, in Galloway and Carriect, quhairof mention is maid in the Actes of Parliament, Ja. IV. p. 2. c. 18. 19. signifies ane gift, sik as horse, or uther thing, quhilk an man in his awin lifetime, and *liege poustie*, gives to his maister, or to onie uther man that is greatest in power and authoritie, and speciallie to the head and chiefe of the clann, for his maintenance and protection, like as for the samin effect and cause sinderie personnes payis Black maill to thieves, or maintainers of theives, contrair the laws of this Realme. Bot in the Iles and Hie land of this Realme, the *calpes* are presentlie payed be him quha oblishes him theirfore, after his decease. Swa the *Herezeld* is payed be provision of the Law: and the *Calpe* is given be speciall paction and obligatione, baith the ane and the uther, after the decease of the debtour. Bot the *Herezeld* suld be first payed to the Lans-lord, and an notable oppression is used in taking up of the *Caupe*. For gif the chiefe of the clanne oblishes him to pay ane *Calpe*: after his decease, ane *Calpe* is payed for him. And also quhen onie of his clanne deceasis, ane *calpe* likewies is payed for ilk ane of them, be reasoun of the promes maid be their maister and chiefe. "Perinde ac si obligatio facta per principem tribus, obligaret singulos ex tribu."

CEPUM *animalium*, the taulch, creische or fatnes of beastes, “leg. burg. c. “ si quis scienter, l. 71.”

CHAMPERT, ane bud, or gift, taken be onie greate man, or judge, fra onie person, for delay of just actiones, or furthering of wrangous actions; quhiddel it be landes or onie gudes moveable, “Stat. 2. Ro. Br. c. dominus “ Rex. 22. Champert,” in the lawes of England is quhen the judge be himselfe directlie, or be ane uther indirectlie, manteines the pley, to obtaine the maintenance of the ane partie against the uther, “John Rastell, ver. Champert.” In the civill law, “pactum de quota litis,” is unlesum and forbid- den, l. 5. c. de postuland, l. si contra 22. c. mandati.”

CHARDONES *vel Cardones*, Cardes quhairwith wol is carded and wrocht. “leg. burgh. c. de parva custuma 137.” fra the French word *chardon*, from *pardus* ane thrissill, to the quhilk the Cardes are like in scharpnnes, and in multitude or similitude of monie scharp pykes and teith.

CHAUD MELLE, in Latine *Rixa*, ane hoat suddaine tulzie, or debate, quhilk is opponed as contra to forthought fellonie.—“Ja. 1. p. 6. c. 95.—vid. “ Mellelum,” vid. Forthought fellonie.

CHECKER, and the forme of Comptes maid theirin—“vid. Scaccarium, “ vid. Ballivus.”

CLAN-MAKDUF *de judic. 78.* The croce of Clan-makdúf dividis Stratherne fra Fife abone the Newburgh, beside Lundoris. The quhilk had pri- viledge and libertie of Girth, in sik sort, that quhen onie man-slayer, being within the ninth degri of kin and bluid to Mak-Duff, sumtime Earl of Fife, come to that croce, and gave 9. kie and an colpindach, he was free of the slaughter committed be him. In the stanes of this Croce I saw sindrie barba- rous wordes and verses written, quhilk here willinglie I premit, and zit sum of them appearis to be conforme to this purpose ;

“ Propter makgidrim et hoc oblatum, Accipe smeleridem super lampade
“ limpida labrum.”

King David the II. gave and dispoind the Earle-dome of Fife, with all pri- viledges, “et eum lege quæ vocatur Clan-Makduff,” to William Ramsay and his aires, quhilk charter is zit extant in the Register. Hector Boetius, lib. 12. declaris three priviledges given to Mak-Duff, his clanne and familie, 1. that the Earle of Fife suld set up the King in his Chyre, the time of his Co- ronation; the 2. that in the time of battel, he suld fetch the want-gard.—The 3. that Mak-duff and his clanne suld have the priviledge and right of re- galitie. And I saw an auld evident, beand that Spens of Wormestoun

Chyre.

beand of Mak-duff's Kinne, 'injoyed the benefit and immunitie of this lawe, for the slaughter of ane called Kinnynmouth.

CLAREMETHEN, Clarmathen, the law of Claremethen concernis the warrandice of stollen catteil, or gudes; for quhen sik gudes are challenged, or repeated be the just awners theirow, it is statute and ordained, that all persones quha suld warrand the samin, sall cum to certaine places, speciallie nominate and appoynted to that effect, and lauchfullie warrand the samin. "Lib. 1. c. hæc sunt loca, 22. Stat. Alex. c. de Catallo, 12."

CLARIFICATIO "quo. attach. c. si quis appellat, 46." The purging or clenging of ane assise, "assi. Reg. Da. c. 3. Clarificatio debiti," the clearness of ane debte, quhilk is notour and clear in the selfe, or clearlie and sufficient lie proven and verified, "Leg. Forest. c. probato, 86."

CLEP, and Call, ane forme of claime, petition, or libell, or certaine solemne wordes used speciallie in criminall causes, for some clames were conceived simplie, without onie solemnitie of wordes, as in the brieve of distres, or poynding for debte, "quon. attach. c. de brevibus, 31." Uther clames were libelled and conceived in ane certaine solemne forme, as in the pleyis of wrang and unlaw, in the quhilk clepe, and call, was used as ane certaine solemnitie of wordes prescribed be the law, and observed in the practik, as when the persewer did clep, and call, the defender with wouth wrang and unlaw, in harming and skaithing of him of sik ane thing, or of sik ane summe of silver, mair or lesse, to his great harme and skaith.

COLPINDACH, an zoung beast, or Kow, of the age of ane or twa zeires, quhilk now is called an Cowdach, or quoyach, quhairof the price was 30. d. leg. Ma. Ma. c. 4. It is an Irish word, and properly signifies ane fut follower.

COLLISTRIDIVM, "Collistrigium, quod collum stringat." Quhilk maie be called the Joggs, and is ordained for punishment of baxters, "leg. burg. c. "si aliquis. 21." quhair it is called an pillorie, or stocks, or onie band quhair with the craig or hass is bund, as an halfe-fang, in the laws of England, anno 51. Henr. III. in Latin *Numella*.

CONQUESTUS, quhairof frequent mention is made in the lawes and practik of this Realme, is different from heretage. Because heretage signifies lands and immoveable gudes, quhilk pertainis to onie person as aire and universal successour to his father, or onie uther predecessour: and be the civil lawes "hæreditas nihil aliud est quam successio in universum jus, quod de Heretage. "functus habuit, 1. hæreditas. 62. de regul. jur. 1. nihil 24. de verb. signif." And be the municipall law of this Realme, the eldest sonne succedis "jure uni-

“ versali in universam hæreditatem patris sui, lib. 2. c. cum quis, 29.” *Conquestus* signifies landes quhilk onie person acquiris and possessis “ privato jure, “ vel singulari titulo, veluti donatione, vel singulari aliquo contractu, lib. 3. c. “ cum vero, 28.” Quhilk is conforme to the civill law, “ ubi conquestus dicitur “ lucrum, quod exemptione, Venditione, locatione, coductione, vel generali- “ ter ex opera cujus descendit. l. coiri. 7. cum. seq. ff. pro Socio. Et de jure “ hujus regni, conquestus cujuslibet liberi hominis legitimi, qui moritur de ip- “ so sasitus hæreditarie, sine hærede de corpore suo, gradatim ascendit: hære- “ ditas vero gradatim descendit. Stat. Wilh. c. notandum, 24. leg. Burg. c. “ sciendum. 155. Stat. Rob. III. c. 3. vid. post-natus.” And it is to be observed, that gif conquest landes, after the decease of the conquerour, dois anis ascend to ony person, quha theirafter happenis to decease, the samin landes sal descend as heretage to his nearest aire; because conquest dois allanerlie anis ascend, and thereafter perpetuallie descendis to the righteous aire, gif onie be; “ quia conquestus dicitur ratione primi conquestoris, et cum “ transmittitur ad ejus hæredem, exuit naturam conquestus, et induit naturam “ hæreditatis.”

CORONER, Crouner, inquires be ane inquest anent murther and slaughter done and committed quietlie. The quhilk inquisition suld be taken in the hie streites, or in open places, in *corona populi*; for the quhilk cause he is called *coronator*, or zit because the violent death of the subjectes pertains to the Kingis Crown and power. Quhairanent the crouner takis inquisition, as said is, D. Thomas Smith, lib. 2. c. 23. of the common weill of England, Reade the English Lawes, anno 4. Edward 1. c. 2.

CREFFERA, or *bara porcorum*, ane cruife, or ane swines cruife, “ leg. burg. “ c. Nonlicet. 87.” quhilk in sum auld buikes is called ane *Stye*.

CRO, Croy, in the actes of Parliament, Ja. 1. p. 6. c. 93. is ane satisfaction or assithment for slaughter of ony man. The quhilk the judge suld paie to the narrest of his kin, in case he minister nocht the law as he suld doe. Ja. 1. p. 6. c. 89.

CULRACH, sumtimes is called an furth comand borgh, büt mair properly it may be called an backborgh, or cautioner; for quhen ony havand power or jurisdiction replegis ony man fra an uther man's court to his awin court, he suld leif behind him in the court fra the quhilk the replegiation is maid, an pledge or cautioner quha sal be bundin and oblisked that he quha usis the replegiation sall do justice within zeire and daie in his awin court to the partie complainand upon the person quha is repleged. Quhilk cautioner left in the court be him, and behind him quha usis the replegiation, is called “ Culrach. lib. 4. c. si quis in alterius, 20. quo. attach. c. 3. mod. ten. cur. c. “ 12. de Judic. c. 28.” And gif the parties complainand gettis na reason in

that court, to the quhilk the defender is borrowed and repledged, he sall have regres againe to the first court fra the quhilk the replegiation was maid, and their sall the mute and pley be ended, and the Culrach sal be in ane unlaw, gif the partie persewed compeirs nocht; and he quha used the replegiation, and did nocht justice, sall tine his court for zeire and daie.

CURIA, ane courte, quhairof sum are superiour and some inferiour, "leg. Malc. Mak. c. 4. vide Amerciamentum." The supreme court is the Parliament, quhilk hes jurisdiction of all matters ecclesiasticall, civill, and criminall. All courtes, by and attour the ordinar persones of the judge, the persewer, and the defender, suld have certain uther persones and members, quhilkis are called *claves curie*, the keyes of the court, that is ane lauchfull officiar or serjand, quha suld summond, attache, and arreist the parties. Ane lauchfull Clerke quha suld informe the assize, and the dempster, and hes the care and keiping of the proces. Ane sutour quha wardis and pronounces the waird and interlocutor of the Court. Ane dempster or doimester quha gives the doome or sentence definitive, conforme to the information of the Clerke or Judge.

Claves
Curie.

CURIA "christianitatis lib. 2. c. debet autem, 37. lib. 1. c. placitum, 17." Is called the ecclesiasticall jurisdiction or court, utherwaies "forum ecclesiasticum, lib. 1. c. 5. Curia Christianitatis opponitur laicali seu sæculari, lib. 2. c. cum aliquis 59. lib. 3. c. preterea, 23." For unto the ane perteinis the ecclesiasticall, and to the uther the temporall or secular jurisdiction.

CURIALITAS, curialitie, curtesie, from the French *Curtoise*, civilitie, gentleness, humanitie, for the law of curtesie is an gentill and favourable ordinance or constitution, granted and observed in this Realme, and nocht universallie keiped or used in uther cuntries, and therefore it is called *Curialitas Scotiae*, the curtesie of Scotland. And in the lawes of England, *lex Angliae*, or the curtesie of England, within the quhilk twa realmes, and nane uther, this law is in use. That is, quhen onie man maries lauchfullie ane wife, and receivis lande and heritage with her: And it happen that he beget with her ane bairne, quha being borne, is heard cryand betuixt four walles of ane house: And thereafter his wife deceasis before him, he sall bruik and possesse all the lands quhilks pertained to her in-during his life-time, albeit the bairne live or deceas.—"Lib. 2. c. cum itaque, 58." The bairne borne, being sonne or daughter, maill or femaill, "de Judic. c. Maritagium, 127:" Quhilk law hes place in landes and heretage lyand without burgh, halden of the King or ony uther superiour: And also in landes and tenementes lyand withiu burgh, and halden in free burgage.—"Leg. Burg. c. si aliquis, 44." This law is nocht introduced in favoures of the wife or bairnes, bot is maid in favoures of the husband allanerlie. And therefore is nocht necessar that he have onie saising, infestmente, or uther right, to the landes quhilk pertained

to his wife heritable: Bot onelie the benefite and privilege of the curtesie, quhilk is valiable and sufficient to him induring his life-time, for bruiking and possessing of the landes, and for removing, out-putting, and in-putting of tennentes, in sik manner as gif he were proprietare, lyfe-rentar, tackesman, or rentaller. And maire-over, the lawe of the curtesie is extended in favour of the second husband. And therefore gif ane man maries ane heretrix, and after his decease shee marie an second husband, and beare to him ane sonne or ane daughter, and thereafter shee deceases, hir second husband aucht and sulde bruik and jois the priviledge of the curtesie, in sik manner as gif the first husband might have done, in case his wife had deceased before him, "lib. 2. dit. cap. 58. de Judic. Cap. 127."

As concerning the estaite and qualitie of the woman that is married, it is necessar that she be heritable infest and saised in the landes as aire to hir father or uther hir predecessours. Bot it is nocht necessarlie required that she be ane virgine and maiden. Because the curtesie pertains to the second husband, quha marries ane widdow as said is. Alwaies quhiddar the wife be widdow the time of hir second marriage, or virgine and maiden the time of hir first marriage, necessarlie shee suld be an heretrix, aire, or universal successour to hir Father, Mother, or to some uther of hir predecessours. For gif the wife hes onlie richt and titill to the landes and heretage as singular successour, be vertue of onie contract, "*veluti titulo emptionis*," hir husband after hir decease can never clame richt to the landis induring his life-time be the curtesie of Scotland. Twenty-aught Januar, an thousand five hundred nintie-five, Robert Lundie of Balgony contrair Robert Balfoure of Dovane. The curtesie hes nocht place quhen na bairne is borne in lauchfull marriage, for it is necessar that ane bairne be borne, maill or femaill, quick and liveand: And for probation theirow, he mon be heard cryand, for the curtesie hes place *in pucro clamante*, (or as it is written in some buikes *brayand*, *squeiland*, or loudlie cryand. For in French *brayer*, in the Latin *vagire*, is to crie or greite with ane loud voice. Quhilk word, in our language, is alswa attributed to Horse, Hartes, and uther beastes. And gif contraversie arise anent the life or crying of the bairne, it is leisume to the Father to pruipe the samen be twa lauchfull men or women quha heard the bairne "*clamare*," "*plorare*, *vagire*, seu *brayare*, leg. burg. d. cap. 44." The husband or father suld bruik the curtesie after the death of his wife, albeit the bairne being borne quick, happen to decease immediatelie, or shortlie after his nativitie. Or albeit the bairne and the mother baith departe this life; for suppose the bairne happen to decease before his mother, and shee decease thereafter, or albeit baith the bairn and the mother decease at ane time, or zit gif the bairne levis, and the mother before the husband depart forth of this life, the husband survivand after her death sall bruik the priviledge of the curtesie of all landes quhairin his wife was heritable infest, ninth of Julij an thousand five hundreth nintie-seaven. Martha and Eupheme Mackalzeans contrair Maister James Wardlaw advocate. Swa the substantiall heades of

the curtesie are thir following, quhairof gif onie ane failzie the curtesie ceasis. First is required ane lauchfull marriage betuixt man and wife. Secondlie, The wife suld be an heretrix haveand *ius universale*, quhairbe she succedeis to her father, mother, or some uther her forbearer. Thirdlie, She suld be heretable infest and saised in the landes. For gif she decease, nocht beand entered and saised, hir husband suld have na curtesie. Fourthlie, She suld decease before her husband, for sa long as shee and the husband livis, he hes *ius mariti*. And after hir decease he hes *ius curialitatis*. Fiftlie, Bairnes suld be lauchfullie gotten and borne, at the least ane bairne maill or femaill, quick and livand. Last of all, the curtesie is als effectuell to the husband, tuiching wairde-landes, pertaining to his wife, as the Kingis confirmation. For landes halden of the King in chiefe, and confirmed be him, fallis nocht in wairde induring the life-time of the person to quhome the confirmation is granted, he being theirby immediat tennent to the King. And like-wise, gif onie man maries an heritrix of waird-landes, and after her decease her aire is minor and of lesse aige, neverthesse the landes fallis nocht in the superiours handes be reasoun of warde. Bot the husband sulde bruike and posses the samin induring his lifetime, be reason of the curtesie of this realme. Because the right of the waird pertaining to the superiour ceasis quhair the curtesie belanged to the husband hes place. Penvlt. Februar ane thousand five hundreth fiftie-three, George Gorthie contrair the Lord Methven. And zit the husband, being onlie life-rentare, may nocht sell or annaillie heretablie the said landes, or onie pairte theirow, in hurte and prejudice of the richteous aire, leg. burg. c. 44.

D

DISCLAMATION is used in the law and practick of this realme, "Clamare idem est quod dicere, affirmare;" As "clamare aliquod tenementum, aut aliquam terram esse suam," to clame and affirme onie heritage or lands to be his awin. "Clamare aliquem dominum" to clame, avow, and affirme onie man to be his maister or superior, to quhom he aucht service, and of quho he haldis his landes in chiefe. *Disclamare* is to disclame, dis-
Disclamare.
 avow, or denie, as to denie ane uther to be his superiour, as quhen the superiour affirmis the lands to be halden of him, and the vassall denies the samin. In the quhilk case, gif the contrar be fund of veritie, the vassall tines and amittis all the landes quhilk he haldes of that superiour, and the propertie theirow returnis to the superiour, "de maritag. c. 18. Stat. Ro. III. c. primo, 20. Quhair the auld forme and manner of disclamation is declared. Mair-
 over, disclamation is quhen the persewer claimes landes perteinand to him, and halden of an superiour; and the defendour affirmis samin to be haldin

of ane uther over-lord, "lib. 1. c. solet. 26. lib. 3. c. tali, 18." To the decision of the quhilk controversie, baith the saids alleadged over-lordes suld be called. And he qua failzies to proove himselfe superiour, sall never be heard to clame the samin afterward, and the vassall being convict, tynis the land and propertie theirow, quhilk is adjudged to him quha was wrangouslie denied be the superiour, and is found to have richt theirow, "lib. 1. c. si vero, 28." Last, the vassall tynis and forefaultis his landes, gif he wrangouslie denies his few, or the condition theirow, that is the service aucht theirow, conforme to the French proverb, *qui siefdeniefie, spert*. The reason is, because the vassall denyand his halding, his maister, or landes, contemnis and dishonours his maister. Bot it is necessar that the vassall or tennent denie fraudfully, that is wittinglie, "quia vassallus feudum quod sciens abnegavit, amittit, ignorantibus vero subvenitur. Quod si dubitet, dubitanter respondere potest. Cuiacius, lib. 4. de feud. tit. S. et tit. 21. et tit. 39. de pœna negantis feudum."

Sacramentalles.

DISRATIONARE, from the French word *Disrener*. In Latin *Duellare, Duello contendere*, to fecht in singular battell, and commonlie is understand of the appealer, or persewer, "quia cum vadiatur duellum provocans dat vadium disrationandi, et defendens vadium defendendi." Sumtime *disrationare* is mair generallie taken for to tine onie thing in judgement be forme of proces, concord, or aggriance, "lib. 3. c. cum itaque, 14. lib. 2. c. fieri autem, 67. quon. attach. c. 4." Item, it signifies to proove onie thing conforme to the consideratione of the Courte be battell, write, or be an assise of the cuntrie, "lib. 1. Cap. si vero, 18. Cap. si vero Dominus, 29. Iter camer. Cap. apprens. 24." Or be the aith of the partie, and certain conjuratoures quhilks are called *Sacramentales*. Quha sum-time mae, and sum-time fewer in number, makis faith and swears in onie cause with ane partie haveand entresse in persute or defence. Cuia. lib. 1. de feud." And in the lawes of this realme, "dicitur aliquis Jurare cum tertia, septima, duodecima manu." Quhen three, seven, or twelfe persones swearis with him. Quhilk in the Cannon Lawe is called "Purgatio Canonica."

Ejection.
Spuilzie.

DISSASINA, *Sasina*, is ane French worde, and signifies possession; to the quhilk *Dissasina* is contrare, and signifies dispossession, quhair ane person beand in possession of onie landes, as mailer to his maister, or haveand onie uther title theirow in write, is wrangouslie ejected and put fra the samin, without onie warning or ordour of law. Likewise *Dissasina* is called spuilzie, quhen onie person is spuilzied violentlie and wrangously of moveable gudes and geare, pertaining to him as his awin proper gudes, and being in his possessioun certaine daies or monethes. For ejection concernis landes and gudes immoveable: and spuilzie is of cattell, and gudes moveable, and baith the ane and the uther is comprehended under "Dissasina, ass. reg. Da Cap. Statutum fuit, 31." Quhilk is conforme to the English lawes. "Henric

§ III. Stat. de Mertoun, c. 3." and to the laws of France. "Molinæus in "stil. cur. Parl. part 1. c. 18." And be the auld law of this realme, *Dissasitor*, or committer of spuilzie or ejection, being convict thereof, suld pay ane unlaw of ten pundis to the King. "Stat. Alex. c. Stat. 7." And may be accused criminallie before the Justice and his deputies. Ja. V. p. 4. c. 33.

DISPARAGIUM, like as *parage*, is called equalitie, from the Latin word *paritas*. Sa *disparagium* is called inequalitie in bluid, honour, dignitie, or utherwaies, from the word *disparitas* "leg. Forrest. c. de hæredibus, 64. cum "seq."

DISSOLUTION, ane Latin word, quhilk signifies lowsing of that thing quhilk was bound of before. And likeas lowsing is contrair to binding, swa dissolution is contrair to annexation, speciallie in the Kingis propertie, annexed and united to the Crown. For the samin being dissolved, is maid lowse and free of that nature and qualitie, that it be annalied and disposed to sik as pleasis his Hienes, with certain conditions and provisions.—Dissolution of the propertie is made to the effect the samin maie be sauld and annalied be the King, and therefore can nocht be lauchfullie maid in his minoritie. Ja. VI. p. 14. c. 203. For like as the King being minor may The King is nocht sel his propertie; evin sa at that time it is nocht lesum to him to doe his minoritie maie onie thing that maie be ane preparative to the alienation theirow. And like- nocht dis- wise gif onie man haveand heritable infestment or uther richt to onie part solve his of the Kings annexed propertie, for the crime of treason, is forfaulted; and propertie. theirafter be the three Estaites in Parliament is restored in the minoritie and lesse age of ane King. Albeit this restitution may rehale his person, zit is na sufficient richt to repone or restore him againe to 'his richt of the said annexed propertie. For like as an dissolution maid in the Kings minorite is null, even swa ane restitution maid in his les aige, concerning his annexed propertie, is of nane avail, for the dissolution and restitution ar baith of ane nature, and producis ane effect hurtfull and prejudiciall to the King, in *Registro*, 18. Julij 1597. The Kingis advocate contrar Alexander, Lord Hume, and tennentes of Dumbar. And sa it is manifest that ane dis- Quhen and solution of the annexed propertie suld be maid be ane King in his maioritie, be quhome dissolution in an Parliament, with consent of the three Estaits, Ja. VI. p. 15. c. 233.— suld be Bot an annexation may be maid in Parliament in the Kings minoritie, "quia maid. "rex eodem modo quo quilibet minor conditionem suam potest meliorem "facere." It is lesum to the King, after the dissolution, to set his proper lands annexed, or unannexed, in few-ferme to onie of his lieges, and speciallie to the kindlie tennentes and possessours theirow, as he pleasis. Dissolution To quhom induris only for the lifetime of the King, maker and author theirow, and quhen may the he deceasis, the same ceasis and endis. And theirow the same beand tem- King set his porall and personall, his aires and successours may not set onie annexed landes propertie. in few-ferme, be vertew of onie dissolution maid be his father or predecessour.

Dissolution is temporal. Albeit dissolution be temporal, as said is, zit the landes set and disponed heretablie after the dissolution, remains perpetuallie with them and their aires, to quhom they are disponed, after the forme of the conditiones contained in their infestments. And swa the alienation and disposition lauch-

Disposition of landes dissolved, is perpetuall. fullie maid, is perpetuall, "*et transitoria ad hæredes.*" Albeit the dissolution be temporal and personall, as said is. The dissolution expyrand and ceasand be the decease of the author thereof, as said is, all the landes annexed of before returnis againe to the forme and nature of the annexation: Swa that

The dissolution being expired, the annexation beginnis to quicken and revive, the same may not be set in few-ferme, nor annaied be the King succeed- and to him quha maid the dissolution, untill ane new lauchfull dissolution be maid thereof be himself. In respect that all annexations of their awin nature ar perpetuall; and albeit they may be interrupted and stayed for ane certaine space, be ane dissolution; zit after the ende thereof, the annexation dois quicken, revive, and walken, as it were, out of sleep, and returnis to the awin perpetuall nature, and swa remainis untill ane new dissolution be maid.

The King may set his propertie in few-ferme allanerlie. The King, after ane dissolution, may set his landes in few-ferme allanerlie, and not in blench, or "*nomine albae firmæ,*" nor be service of warde and reliefe, or utherwaies, bot in few-ferme, as said is, Ja. VI. par. 15. ca. 234.

The Kings rental of the propertie baith unannexed and annexed, suld be augmented. The King may not set his landes in few-ferme, except the samin bee done with expresse augmentation of his rentall: That is, his gressumes, customes, burrow-mailles, fermes, martes, mutton, pultrie, avarage, cariage, or ony uther dewties and service. Quhilk is not only manifest in the alienation of the annexed propertie, bot likewise suld be observed and keiped in the disposition of the unannexed propertie. For it is certaine that the Kingis of this realme, the time of their coronation, makis faith solemnlie that they sall not annalie, transfer, nor dispone the richt and rents of the crowne: As it is statute be David II. 6. No. 1357; and sa as the King may not sell the richt of the crown, na mair may he annalie the rentes their of, quhair of the unannexed propertie is ane parte. Mairover, albeit an dissolution is not necessar in the alienation of the unannexed propertie (because that quhilk is not bound requiris na lowsing), zit in al dislutions maid be Kingis of this realme, expres mention is made baith of the annexed and unannexed propertie, to be set in few-ferme, for augmentation of the Kingis rental; quhairby it is certaine that the ane, alsweil as the uther, being set in few-ferme, cannot be disponed in diminution of the rental. And, concerning that qualitie and condition expreemed in the forme of all dissolutiones, the unannexed and annexed propertie ar of like nature: "*Et in hoc casu pari jure consentur:*" Sa that neither the ane nor the uther may be disponed, with diminution of the rental, utherwise the mention of the unannexed propertie, in the acts maid anent dissolution, were superfluous. Thir ar the substantiall conditiones, expreemed in the dissolutiones of the propertie, maid be the Kings of this realme, quhair of, gif ony ane be not observed, the aliena-

Mon and disposition maid after the dissolution is null, and of nane availe,
 Ja. VI. p. 15. c. 236. By and attour the forme of dissolution abone ex- The annex-
 preemed, it is leasum to the King, with advise, deliverance, and decreet of ed propertie
 the haille parliament, and for great, seand, and reasonable causes concerning may be an-
 the weilfare of the realme, first advised and digestlie considered be the three nallied be
 estaites, to sell, annallie, and dispone the Kings annexed propertie, Ja. II. the three
 par. 11. cap. 41.—Ja. V. p. 6. c. 84. Estaites.

DOS hes twa significationes.—First it signifies that quhilk is given to the
 husband, with the wife, be reason and in contemplation of marriage. In the
 civill law it is called *Dos*, in our municipall law *Maritagium*. Tocher gud. “Lib. Maritagi-
 “2. c. *Dos* autem, 19.” Secondly, *Dos* is taken for that gift and disposition of um.
 lands and tenements, quhilk ane man givis to his wife quhen he marries her
 at the kirk dure, or in the face of the halie kirk; Quhilk aucht and suld be
 ane reasonable third part of all and haille the tenement of land quhilk the
 man or husband hes the time of the dispensation or marriage. “Lib. 2. c.
 “*Dos* autem, 19. c. 20. lib. 4. cap. quatuor, 49. Sta. Alex. c. 8, de Judic. 162.”
 And is given in recompensation of the tocher payed be her, or in her name,
 to her husband: And therefore is called *antidos*. Cornek Tacit. callis *dos* Antidos.
 that quhilk the husband givis to the wife, and not that quhilk the wife givis
 to the husband. Livius, lib. 3. callis it *munus nuptiale*. In France it is called
dotalitium, or *doarium*. It is given to the woman, to the effect, that after the Dotalitium.
 decease of her husband, she may susteine and nurish hirselle induring all the Doarium.
 daies of her life-time: Therefore it is called *vitalitia*, *morganaticum*, for the Vitalitia.
 Dutch word *morgengab*, morning gift, is ane kind of dowry, in the second Morganati-
 signification; and signifies the gift of guds moveable or immoveable, quhilk cum.
 the husband gives to his wife the day or morning after the marriage, and
 commonly is used in the Dutch lawes, “in speculo Saxonico et Landrecht,
 in Greek “*ἡνυπρόλογον*,” in Latin “*matutinale donum*.” Cuiacius, li. 4. de feud.”

DUELLUM, “*duorum bellum vel plurium*,” singular battell, or combat:
vide *Championnes*; noble persones, or landed men, may fight in proper person,
 or be uthers in their name, quha ar called *Championnes*, in Latin *duellatores*,
 speciallie sik as ar their awin bondmen or tennentes, quha in bodie and
 guds ar under their maisters protection and maintenance; and therefore suld
 hazard and employ the samin in the defence of their maisters honour and
 actiones. Bot husband-men, ignoble, and unlanded men, suld fight person-
 allie, and nocht be *Championnes*. “Ass. reg. Cap. Statutum fuit per regem, 32.”

Bot all men that are decreeped, lamed, mutilat, or past the age of three-
 score zeires, are excused from singular battell. “Lib. 4. c. 4. Leg. Burg. c. Si
 “burgensis, 24.”

And siklike, religious persones, clerkes, and weemen may not be compelled
 to fight. “Lib. 4. c. 3. stat. Alex. c. 5. Ass. reg. Dav. cap. statuit dominus,
 “38.” It is in free will and election of the defender to fight, or to passe to

the knowledge of ane Assise. " Lib. 4. Cap. Quia defendens debet primo eligere, deinde vadiare, et postea jurare. lib. 4. ca. lex statuit, 46."

The appealer or prover suld sweare that his quarrell is just, and the defender sweare the contrair, avowand the equitie of his cause. " Iter. camer. c. Comparentibus, 29." It is not leesum to ony person to provok ane uther to battell, or being provoked to fecht without licence of the King, utherwaies baith the appealer and the defender tinis and foresaltis al their guds moveable and immoveable, " de Judic. c. 87." Because na Barrone hes power of singular battell, or of probation be water or irone, except the Kingis Schireff, or his deputes, be present to see justice done. " Stat. Alex. c. præterea, 32." Mairover, gif ony man havand the Kings licence, happenis to be convict be battell, or of breaking of the Kings peace, he sall pay to the King xxij. Kye, " et tres cathorios, vel pro quolibet cathorio, novem vaccas. Stat. Alex. c. apud, 28." Quhilk paine and unlaw appearis to be ordained to stay sik ungodlie strife and debate; for the law of singular combat is ungodlie, and suld not be used amang Christianes, albeit the same was permitted and used be the Longobardes in civil and criminal causes.— " Alciat. de sing. certam. Cuiac. in lib. feudorum." Quhilk is conforme to the Canon law, " cap. 1. 2. de purgat. vulgar.

Cedere
bonus.

DYOUR, Dyvour, otherwaies Bair-man, quha being involved and drowned in debts, and not able to pay or satisfie the same, for eschewing of prison and uther paines, makis cession and assignation of all his gudes and geare, in favoures of his creditoures, and dois his devour and dewtie to them, proclaimand himselve Bair-man, and indigent, and becummand debt-bound to them of all that he hes. Leg. burg. ca. Bair-man, 144. In Latin *cedere bonis*, quhilk is most commonlie used amangst merchandes, to make *bank-rouit*, *bankrupt*, or *bankrumpue*, because the doer thereof, as it were, breakis his bank, stall, or seate, quhair he used his trafficque of before, " de Judic. c. Bair-man, 46." Be the civil law, sik cession of gudes and geare may be maid judiciaillie, or furth of judgement, be him quha is present or absent, be writ or epistle, or be ane mid person, called " Nuntius, l. ult. de. cess. bonor." Bot to the effect that debtours suld be feared to deceive their creditoures, and suld the mair willinglie pay their debtes in sindrie places, diverse shamefull formes of dyvourie ar used and observed; for sumtimes the debtour, naked, sittis upon ane cauld stane in presence of the people. " Alciatus, lib. 3. " Parerg. c. 47." Sumtimes his hinder partes or hippes are dashed to ane stane. " Guido Papæ, decis. 343."

Or in publick place, bair headed, his belt is cutted, quhairby he is proclaimed indigent of geare and credite; and therefore may passe and repasse quhair he pleasis, without ony trouble of his creditoures.

" Juxta illud Horatii, Epistola secunda, 28. Ibit eo quo vis, qui zonam perdidit."

Conforme to the quhilk, in this realme, he is said to have his belt cutted, *Zonam perdere*, quha hes na gold, silver, gudes, or gear. For in auld times, like as it is zit used in diverse places, ilk man caried his silver and his gold in his belt, either in ane purse hanging at the end thereof, or sewed and inclosed within the samin. “Sueton. in Vitellio. cap. 16. Quia bona aureorum plena se circumdedit. Et Gracchus apud Gellium. Lib. 15. ca. 12. Zonas (inquit) quas plenas argenti extuli, eas ex provincia inanes retuli.” And in the tenth chap. of Matthew, and ninth verse, CHRIST commandis his Apostles nocht to possesse gold, silver, or money, in their girdles. Mairover the forme of the aith, quhilk be the lawes of this realme the Dyvour suld make, containis that he sall sweare that he has nocht in free geare above five shillinges foure pennies: Fra the quhilk cummis ane commoun speach dailie used amangst puir and indigent persons, qua has nocht in gudes nor geare the value of five shillings and ane plack. In the law of Normandie, Lib. 2. c. 10. Lib. 12. c. 21, Dyvoures ar called *Banqueroutieris*. And if they do the samin fraudfullie, they may be punished to the death.

E

ENACH. “Lib. 4. c. statuit. dominus, 64.” Ane mendis or satisfaction for ane fault, crime, or trespasse. As gif the maister lyis with the wife of his bondman or slave: The servand therefore sal be put to libertie, and sall receive na uther *Enach*, mendis, or satisfaction, for the violation or defowling of his wife. “Lib. 2. c. pluribus 14.” Like as utherwaies, “si vassalus cucurbitaverit dominum suum,” that is, gif the vassal makis his maister ane Cuckold; That is, gif he hes carnal copulation with his maisters wife, he tinis and forefaultis his landes, “lib. 1. de Feud. Tit. quib. mod. Feudum amittatur, sect. 2. Corbita,” in the lawes of the Longobardes, is adulterie: Corbita. And *Cucurbita* signifies an Cuckold, quhais wife is an huire: quha uther- *Cucurbita*. waies is called “arga. Gl. in. D. Sect. 2.” From the Greek, “*αργος* desidiosus, Arga. otiosus,” quha sittis idle, and payis nocht his debt, bot sufferis ane uther to *Αργος*. woork his labour. “Alciatus in lib. de singulari certam. c. 32. et in lib. pro- blematum, Horatium sequutus Cucullum vocat.”

ENCHESONE, the cause, occasion, or reason quhairfore ony thing is done: As quhen we say that ane is condemned for Encesone of theft: That is be occasion or be reason of theft committed on him. “Mod. ten. cur. c. 21.” Or that the vassall is in the keeping of his Over-lorde, be Encheson of warde, “quoniam attach. Cap. 51.” And ane action or pley may be advocate fra the Schireffe Courtes to the Kingis Courte for mony causes. “Lib. 2. c. Dos autem 19.” Quhilk in sindrie English buikes is said for

mony Enchesunes. And Ed. I. King of England, Westm. 1. c. 6, statutis and ordainis, that na man sal be ane merchand without ane reasonable Enchesone.

ENEYA, *pars haereditatis*, ane French word, for the first, chiefe, and principall parte of the heritage, “ Leg. Forest. c. si Haereditas, 96.” For in the French toung, and speciallie in the law of Normandie, the eldest and first begotten sonne is called *l’aisne*, and in the lawes of England, Henry III. in stat. Marlebrig. cap. 9. it is called “ Enitia pars haereditatis.” And likewise in ane uther place of the lawes of the samin King, *Jus esnicae*, quhilk in this Realme is the law of birth richt: In Latine “ jus primogeniturae, de quo Tiraquellus copiose scripsit.” Be the auld civil law of this realme, there is na richt of succession in the richt line ascendent. And therefore the father succeedis not as aire to his sonne, except special provision be maid in the contrar. “ Quia provisio hominis tollit provisionem legis. Et pacta conventa legem contrahentibus praescribunt.” Swa all succession is either in the richt line descendent, or in the line collaterall.

De jure successionum.

De linea recta descendantium.

THEY quha ar of the richt line descendent, suld be preferred to alluthers: As the sonne, the dauchter, the nepuoy, the neipce, and sa descendand “ in infinitum;” observeand and keipand alwaies the prerogative of the degree.—For the *prior* degree excludis the *posterior* from all commoditie and title of succession: As the son in the first degree excludis the nepuoy in the second: and the nepuoy excludis the pronepuoy in the third degree.

De filio.

Gif ony man havand landes and heretage deceasis, leavand ane sonne allanerlie behind him, without all distinction, the sonne succeedis to all and haill the heretage; quhilk is in Latine, “ succedere in assem, vel ex asse, lib. 2, c. cum quis, 29.”

De filiis.

Gif ony man deceasis, and leavis behinde him maa sonnes nor ane, either he is *soccommannus*, and haldis not his lands be service of warde, and then his heretage is divided amangst all sonnes: or he is *Miles*, and haldis his landes “ per servitium militare,” be service of warde and relief. In the quhilk case, the eldest sonne succeedis in the hail lands quhilk heretablie pertained to his father. “ Lib. 2. c. Si quis plures, 30.” But this distinction is not observed be the practique of this realme. Be the quhilk the eldest sonne succeedis to his father, *ex asse*, that is, to all and haill his fathers heretage and landes; Albeit, sindrie uther nationes hes diverse lawes hereanent: Like as be the law of God, in the auld Testament, amangst the Jews, the first borne sonne, after the decease of his father, receivis double portion.—Deut. xxi. 17. That is (as some interpretis) as meikle as twa of his brether. “ Josephus de Antiq. Jud. li. 4. c. 8,” writtis, that the eldest sonne, be reason of his birth,

richt, suld have "*duplicem facultatum paternarum partem*," the double parte of his fathers gudes.

Gif ane man had divers wives, quhairof ane is ane heretrix, havand lands De filiis di-
 perteinand to her heretablie, and hes procreat upon ilk ane of them bairnes, ^{versarum}
 maill or femail, the sonne gotten upon her succedis to her heritage. "Lib. ^{uxorum.}
 "2. c. Si autem, 31." For as generallie the sonne succedis to the father,
 swa in this case the sonne suld succeed to his mother. "Leg. Forest. c. Si
 "quis habuerit, 26. de Judic. c. 24." Conforme to the common rule of the
 law, "*Paterna paternis, materna maternis*."

Quhen ony man deceasis, leavand ane sonne and daughter ane or maa, De filio et
 the son allanerlie succedis to all his fathers heretage. "Lib. 2. c. Maritus, *filia vel filia-*
 "32." As gif ane man hes procreat with his first wife dauchters, ane or maa, ^{bus.}
 and after her decease begettis ane sonne upon ane uther wife, the sonne onelie
 succedis to him. "Leg. Forest, c. Si quis habuerit, 26." Because the son
 borne of the first, second, or last wife, succedis as universall aire to his
 father, and excludis all his sisters. "De judic. c. Item nota, 115." As it is
 written in some buikes, "*fœmina non succedit cum masculo*."

Failzieing sonnes and bairnes, lauchfullie gotten of their bodies, the daughter De filia.
 succedis. For gif the defunct hes ane daughter allanerlie, shee suld succede
 to all her fathers heritage, in the forme and manner as the sonne suc-
 ceedis to his father. "De judic. Cap. Item nota, 115. Lib. 2. cap. Hære-
 "dum, 28."

Item, Gif ane man deceasis, leavand behind him maa dauchters nor ane, De filiabus.
 gotten upon ane mother, his heritage suld be divided equallie amangst them,
 in als many partes or portiones as there is dauchters to succede. Quhilk
 forme of succession is called "*successio in capita, cum scilicet hæreditas ade-*
 "*unda, dividitur in tot partes quot sunt capita, vel personæ succedentes*." ^{Successio in}
 Bot the eldest daughter suld have the principall messuage, without division, ^{capita.}
 be reason of her dignitie and birth richt, and satisfaction therefore suld be
 maid to the remanent dauchters. "Lib. 2. cap. Si autem, 31. De Judic. c.
 "Item Nota 115." Togidder with the superioritie of the portiones pertein-
 ing to all her zounger sisters, to quhome their husbandes suld make homage,
 acknowledgeing her to be their superiour, and their aires suld give the relieve
 of their landes quhen it sall happen. "Lib. 2. c. Maritus, 32."

Gif ane man have sindrie wives, and of ilk wife ane or maa dauchters, all De filiabus
 his dauchters succedis to him in his heritage equallie, "*per capita*," as gif ^{diversarum}
 they were all gotten upon ane mother. "Lib. 2. c. porro contingit, 33." ^{uxorum.}

Item, Gif maa dochters nor ane ar procreat upon sindrie wives, of the
 quhilk wives ane is ane heretrix, swa that the heretage cummis be her, and
 not be her husband, the daughter or dauchters gotten upon her succedis to
 her heritage, and excludes all the rest of the dauchters theirfra. "Leg.
 "Forrest. c. Si quis habuerit, 26 De Jud. ca. 24."

Be the lawes of Burrowes, gif ane Burgesse have maa wives nor ane, and De liberis
 bairnes procreat of ilk ane of them, all the lands pertaining to him, be reason ^{burgensium}
 ex ^{diversis}
 uxoribus.

of heretage, or conquest, in the time of his first wife, suld perteine to the bairne gotten with her in the first marriage; and all the landes conquest be him the time of his second wife, sall perteine to the bairne gotten with her in the second marriage. "Leg. burg. c. Si Burgensis, 26."

De secundo gradu nepotum vel neptium.

Failzieing sonnes and daughters, quhilkis ar nearest and lauchfull aires, the richt of succession perteinis to the Nepuoy or Neipce, gotten upon the sonne or the daucher. "Quia deficientibus proximioribus hæredibus, nempe filio vel filia, vocantur hæredes remotiores, ut Nepos vel Neptis ex filio vel filia, "recta linea descendens, l. 2. c. Hæredum, 28."

De nepote uno vel pluribus ex filio.

Gif ony man deceasis, leavand behind him ane Nepuoy or Nepuoyes, ane or maa, procreat be his sonne alreadie deceased, ("Ex filio præmortuo") they suld succede to him in the samin manner as is abone said of the succession of sonnes: That is, gif there be ane Nepuoy allanerlie, he is onclie universall successour: And gif there be maa Nepuoyes, the eldest allanerlie succedis to all, "l. 2. c. Porro, 33."

De nepote et filio.

Gif ony man deceasis, leavand behind him ane nepuoy, begotten be his eldest sonne alreadie deceased, and ane second sonne, quha is father brother to the said nepuoy, the second sonne is excluded from all richt and commoditie of succession to his father. Because the nepuoy lauchfully begotten be the eldest sonne representis the personne of his father, and therefore "Jure repræsentationis" succedis in his fathers right; and consequentlie is onclie aire to his gudschirs, like as his father would have been, gif he had not deceased before him, "Lib. 2. c. Porro, 33."

De nepte et filio.

The like is to be understood of ane neipes or neipces, ane or maa, begotten be the eldest sonne alreadie deceased, quha suld be preferred to their father brother, anent the succession of their gudschirs heritage; except speciall provision of tailzie be maid in favoures of the aires maill. "Quo casu hæredes masculi succedunt, non dispositione juris, sed ex provisione hominis."

Item, Ane neipce or maa, of ane sonne or daucher, succedis to their gudschire or guddame, in the samin manner as their father or mother suld have done, gif they were zit living. "Lib. 2. c. Porro, 33." And in this case it is to be observed, that quhen maa neipces nor ane, borne of sindrie mothers, succedis, that the heritage suld be divided "ratione stirpis," in as many partes as there is stokes, of quhom the saidis neipces descendis and proceedis: As for example, gif there be ane neipce begotten upon ane daucher, and twa neipces begotten upon ane uther daucher, they all three suld succede to their gudschir; bot the heritage suld not be divided in three partes, "ratione capitem;" bot in twa parties allenarlie, "ratione stirpium:" That is, of the twa sisters quhilkis are the twa stockes of quhom the said neipces descendis. And swa the ane neipce, gotten upon the ane sister, suld have the ane halfe; and the uther twa the uther halfe allenarlie of the heritage. Quhilk forme of succession is called "successio in stripes," quhen the bairnes being maa in number, succedis to als meikle allanarlie as would have pertained to their mother gif sches had been living.

De nepta una vel pluribus. Successio in stirpes.

De linea obliqua collateralium.

Quhen the succession failzies in the richt line descendent, then they quha ar ^{De fratribus.} of the side line, or collateral, suld succeed; as quhen the sonnes and dauchters, and all persones descendand of them lineallie, failzies, swa that there is nane of them to succede, then the brother of him quha is deceased suld succede to him. "Lib. 2. c. Deficientibus, 34. Illi enim qui ex linea recta descendunt semper præferuntur illis qui ex transversa linea proveniunt, et illis deficientibus, hi ad successionem admitti debent, Lib. 2. c. Porro, "33."

The heretage, and all moveable gudes perteing to the eldest brother, de- ^{De fratre natu maxi- mo.} ceased without lauchfull aires of his bodie, perteinis to the second brother, immediately nearest to him. "Quia hæreditas gradatim descendit ad immediate proximum. Lib. 2. c. Si ergo. 23. c. Præterea, 25. Leg. Burg. c. "sciendum, 150."

Gif there be three brether-germain, borne of ane father and ane mother, ^{De fratre natu minori.} and the second brother deceasis without aires procreat lauchfullie of his bodie, his elder brother succeedis to him in his landes and immoveable gudes. And the younger or third brother is alluterlie excluded therefra. "Quia conquestus gradatim ascendit, Lib. 4, cap. Si tres 50. Lib 2. cap. Præterea, 25." Bot be the practique of this realme, the aireschip of the moveable gudes, perteing to the second brother the time of his decease, descendis and perteinis to the younger and third brother, as lauchfull aire: To quhome likewise perteinis the lauchfull tutorie of his said second brothers sonne, quhen it sall happen to fall.

Gif there be maa brether nor ane, three or maa in number, and the youngest ^{De fratre natu minimi.} of all happen to decease without lauchfull aires gotten of his bodie, his immediate elder brother succeedis to him as lauchfull aire: Because conquest ascendis fra ane degree to ane uther immediatlie to the first degree. "Stat. "Rob. III. cap. 3. Stat. Wilhelm. cap. Notandum, 24."

Failziand the brether, and their aires, gotton of their bodies, the sister or ^{De sororibus.} sisters, gif their be maa nor ane, succeedis in *Capita* to their brother, in the samin manner as the daughters succeedis to their father. "Lib. 2. c. deficientibus, 34. de Judic. cap. Si quis, 24."

Gif the brother deceasis without aires gotten of his bodie, his full sister ^{De sororibus, ex diversis matribus.} gotten with him be ane father and of ane mother (quhilk is called "soror germana ex eodem utroque parente") succeedis to all his heritage, and excludis all uther sisters, gif ony be gotten be his father upon ane uther wife, quhilk in Latine is called "soror consanguinea, Lib. quart. Capite So. homo, "48."

After the decease of the sisters, their bairnes succeedis in *stirpes*, in the ^{De sororum liberis.} samin maner as their mothers nicht have done, keipand alwaies the distinction betuixt the maill and femaill, be the quhilk the sister sonne excludis the sister daughter. "Lib. 2. cap. deficientibus, 34. de Judic. c. Si quis, 24. Quia

"(ut dictum est) mulier nunquam cum masculo partem capit in hereditate aliqua."

De patruo ejusque liberis. Failzieing the sister bairnes, and the aires gotten of their bodies, the father brother " (Avunculus, hoc est patruus) and his bairnes descendand of him succeedis. " Lib. 2. cap. Deficientibus, 34. De Judic. cap. Si quis, " 24."

De amitate ejusque liberis. Failzieing the father brother, and the aires lauchfullie gotten of his bodie; the father sister " (Matertera, hoc est Amita) and her bairnes suld succede, conforme to the foresaid distinction betuixt maill and femaill, " Lib. 2. " Capite Deficientibus, trigesim. quart. de Judicibus. Capite Si quis, 24." Be the quhilk distinction, the father sisters sonne excludes the father sisters daughter.

De jure accrescenti. It is to be dilligentlie observed, quhen maa persons nor ane (sik as mony sisters or neipces) succeedis, and it happen ony ane of them to decease without aires lauchfullie gotten of their awin bodies, the portion and part of the heretage quhilk pertained to the defunct accrescis to all them that remainis on life, and suld be divided amangis them all. " Lib. 2. c. Maritus, 32. de " Judic. cap. Item nota, 115."

Last of all, gif ony man, gotten and borne in lauchfull marriage, deceasis without ane lauchfull aire, and it cannot be knawin quha sulde succede to him; or gif it be in question of doubt quha is his richteous aire; be the auld law of this realme, the King, or ony uther superiour, retained the landes in his awin handes, untill the pley was ended in favoures of the just aire, or untill it was knawn quha was the lauchfull aire. " Lib. 2. cap. ult. 53." Bot now, gif there be na lauchfull aire to enter to the heretage, the King, as *ultimus bares*, recognoscis and retainis the samin as escheitte, " ad perpetuam " remanentiam," and may sell and dispone thereupon at his pleasure, as his awin proper landes and heretage.—*Vide Bastardus*.

ERECTARE " Essonia ab aliquo facta, to reckon, esteeme, or judge essonzies, or excusationes, maid be ony person. " Quoniam attach. cap. de " brevibus, 31."

ESSONIUM, an essoinzie or excusation. " Lib. 1. cap. 10; Jam. II. 13. " Octob. p. 11. c. 55; Jam. I. Par. 9. c. 114." From the French worde *Exoin*, quhairof mention is maid in the laws of *Normandie*. " Lib. 9. cap. 10." And be *Molinaus* in " Stil. suprem. cur. part. 1. cap. 6. de contumacia." And by *D. Tho. Smith*, " Lib. 2. cap. 14." of the common weill of *England*.

ESTOVERIUM, " Iter. Camer. cap. Si quis captus, 25. de Judic. cap. 156." Sustentation, Nurishment; for the superiour, during the time of the warde, suld sustaine the aire honourable, conforme to the quantitie of the heretage, Lib. 2. c. *Plenam*, 42; Jam. IV. p. 3. cap. 25. Quhilk is conforme to the *English* law in *Magna Carta*, quhair it is statute, that the warder sall give the

aire his reasonable estovuerie, Anno 9. Hen. III. c. 12. quhair also it is written, that the relict of ony man sall have his reasonable estoverium of the common gudes of her husbände that is deceased, untill her dowrie be payed to her, "Vide Quarentena viduarum."

EVE "et Treve, dicuntur nativi de avo et triavo, quorum majores servitutum servierunt," that is, sik slaves or servandes, quhals father, gudschir, grandschir, and forbears, hes been servandes to ony man and his predeces-soures. "Quoniam attach. ca. de brevibus, 31.—Vide Bondagium."

EXITUS *Terræ*, the rentes, fruites, and profites of the land. "Lib. 2. cap. "Si quis liberum, 24. lib. 3. c. cum autem, 6. quoniam attach. cap. secus, 28. "leg. Forest. c. Probata, 87. Exitus justitiaræ," the profite or commodities of the justice aire, "Iter justic. c. 3. 4. Exitus curiæ," the commoditie and profite of the court, sik as unlawes and summes of money, payed be them quha are amerciat, or convict of ony crime, or comes in will, therefor, as is manifest be the forme of the precept, direct by the Chalmerlane to the Schireffe, to take up and intromit with "exitus camerariæ," or the profits of the Chalmerlane aire. "Exitus hæreditatis de actorn. cap. 1." is called the fruites, rentes, profites, and emoluments of the heretage, quhilk in the English law is called the issues of the heretage. "Mag. Cart. Anno 51. Hen. III. cap. "17." And siklike, "Exitus tenementi," signifies the mailles and dewties thereof. "Quoniam attach. c. Secus, 29. Mod. ten. cur. c. 30."

EXTENT of landes, signifies the rents, profites, and issues of the samin, quhairof there is twa kindes, the auld extent and the new extent. For it appearis that the rentall and valour of landes hes been taxed and liquidat to ane certain summe of silver, conforme to the profites and dewties quhilk the landes payed at that time: Quhilk is called the auld and first extent, *tempore pacis*. Bot because the revenues and dewties of landes, be progress of time, did incresse and grow mair and mair, ane uther taxation and extent was maid in the time of peace, as the former extent, conforme to the profites augmented, as said is, quhilk therefore is called the new or second extent: And properlie is the verie availe that the land is worth, and givis the daye of serving of the brieve. Ja. III. p. 7. cap. 55. To the quhilk the worde *Nunc*, conteined in the brieve and retour, suld be referred. For *tempore belli*, or in time of weire, there is na ordinar or certain extent of landes prescribed be ony law; for in sik time, either the lands are wast, and are not laboured, or the landslordes servis in proper personne: And it is na reason that they suld baith make personal service, and also pay extent or taxation. The Lordes of the Session esteemis an marke land of auld extent to four marke land of new extent. 21. Mart. 1541. Quhilk commounlie is called the fourth maill, and suld be generallie used in retouring of landes to the

Kingis Chancellarie, and uthers chappelles; albeit the samin is nocht perpetuallie observed. This distinction of the auld extent and new extent is necessar; for taxation of landes is raised conforme to the auld extent, and the relief of landes is the retoured maill according to the new extent. And siklike, quhen landes are fallen in the superiours handes be reason of none-entres, he suld have allanerlie the retoured maill thereof, conforme to the new extent.—*Vide* None-entres.

F

FALSING of doomess, Reduction of decreets.—*Vide* Sok.

FARANDMAN. “De Judic. c. 47.” Ane stranger or pilgrimer, to quhome justice suld be done with all expedition, that his peregrination be not stayed or stopped. “Peregrini mercatores dicuntur Farandman, Lib. 4. c. “30. in lib. Sconensi.”

FELONIA signifies nocht onelie the falsed, or the contumacie of the vassall toward his over-lord, or of the over-lord toward his vassall, but also all and quhatsumever capitall crime, in Latine *scelus*, in Dutch *Schelmerie*, or ony other fault or trespassse. “Iter Camer. c. Si quis captus 25. Stat. Alex. ca. “2. lib. 2. cap. ultim. 54.” As to hurt or assailzie ony man with sword, either edge or ure. Ja. I. par. 6. c. 97. Or ony lesse or private crime, as suspition of theft, or quhatsumever fraud, deceate, commonlie used in contractes, pactiones, and uther conventiones. “Lib. 3. cap. ex causa. 8. in fine. “Cuia. lib. 1. de feud.” writtis that fellonie is not onelie rebellion, bot also perfidie, fraud, or ony kinde of fault. “Perfidia, fraus, culpa, improbitas.”

FEODUM, *Feudum*, signifies nocht (as some affirmis) life-rent, in Latine “*usus fructus*.” For he that is saised in the liferent of landes, is nocht understand to be saised “in feodo,” or in the fee thereof; for the ane is different from the uther. 7. Mart. 1561; the Countesse of Crawfurd contrair the Earl of Crawfurd. And siklike, *Feodum* signifies nocht the superioritie of landes. For gif ony married man happenis to decease, vest and saised in the superioritie of landes, his wife suld not have ane terce, or third thereof.

Bot *Feodum* commonlie signifies the heretable fee and propertie of ony thing, and especiallie of lands, as is commonlie contained in brieves and retoures — Cum aliquis dicitur obiisse sasitus et vestitus, in terris, ut de feodo. Lib. “3. Cap. Cum vero 28. c. sequens. 33. Stat. Ro. III. cap. 1.” Of the quhilk landes, the just third and reasonable terce will perteine to the wife, fra the

time of her husbandes decease, induring her lifetime, “vid. Quarentena vi-
 “duar. Dom. feodi or feudi,” is called the Lord of the ground, or land,—
 “li. 2. c. Usuarii 53.” Quhair “feodum et hæreditas,” ar baith ane, “et
 “hæreditas damnati propter crimen, dicitur pertinere ad dominum feodi,
 “tanquam escheta. Item, si quis condemnatus fuerit de furto, res ejus mo-
 “biles et catalla solent vicecomiti remanere: Terram autem si quam habu-
 “erit, dominus feudi habebit. Lib. 2. ca. Forisfactum, 55.” He is called
 urtherwise, “Dominus fundi. Lib. 2. c. Defuncto, 69. Et feudum idem est
 “quod fundus. Lib. c. cap. Mutua. 68.” And “Actio feudi” is ane action
 or pley of landes or heretage. Lib. 1. cap. 2. “Feodum militare,” signifies
 landes halden be service of warde and relief. Lib. 2. cap. Maritagium, 56.
 “Feudum laicale,” is landes perteining to Laicks and Temporall men. Lib.
 2. cap. 59. As “feodum Ecclesiasticum” signifies landes perteining to the
 Kirk, or Kirk-men, “Lib. 3. cap. sequitur, 31. Cum seqq.” swa be the
 lawes of this realme, all gudes and geare ar moveable, and called *Catalla*; or
 immoveable, and are called “feodum, hæreditas, terra, fundus, tenementum.”
 Fee or propertie, in Latin *dominium*, cannot pertain to maa persons nor ane.
 “Quia dominium unius rei uno eodemque tempore non potest esse in solidum
 “penes plures.” And therefore, gif twa or maa persons happenis to be
 infest conjunctlie in ony landes, the propertie perteins to him in quhais aires
 and successours the infestment resolvis. As for example, the husband and
 the wife are infest in certaine landes, the longest liver of them twa, and the
 aires gotten, or to be gotten betuixt them, quhilk failzeing, to his aires, in
 this case the husband is proprietar, and the wife is conjunct fear or liferentar.
 Bot gif it be said (quhilks failzeing to her aires), in that case the wife is
 proprietar, and the husband is conjunct fear or liferentar.

Feodum is taken for the fee, wage, or stipend given to ane servand for his
 service, as in the lawes of King Mal. Mak. c. 4. de feod. offic. dom. reg. quhilk
 urtherwaies is called *liberatio*, ane livery.—Vid. *Liberatio*. Quhairanent the
 L. of secreit Councel and Checker made their ordinances as followes:

At Edinburgh the third day of June 1597.

FOR-SAMEIKLE as the Lords of his Majesties secreit Councel and Checker,
 according to the special power and commission given to them be his Hie-
 nesse, and his estaites, quhilks conveened at Dundee, in the moneth of Maij
 last by-past, hes thocht meete and convenient to set down the prices of his
 Majesties signet, privie and great seales, of all infestments and urther signa-
 tures quhilks ordinarilie suld passe throw them; and of the chalmer fees Prices of
seales.
 quhilkis sall be received hereafter fra his Hienesse lieges, in manner following:
 That is to say, That the signet, according to the auncient custome, sal be the
 rule to the privie and greate seales in all infestments and urther signatures
 quhilks ordinarlie suld passe throw the hail three; and that the privie seale
 sall receive na mair nor the double of the price set downe hereafter for the
 signet; nor the greate seale mair than the quadruple of the said signettis

price, under the pain of deprivation of the contraveeners fra the office and
scale quhilk he possessis;

Prices set downe to the signete for letters and uthers writtes
quhilk passes throw na uther seale.

FIRST, for all sorts of summondes of quhatsumever qualitie vj shillings, viij
pennies.

For letters conteining baith inhibition and arreistment xj shillings viij d.

For letters of law-borrowes, and uther criminal letters, how many persones
soever be insert vj shilling viij pen.

For ministers letters zeirlic raised vij shilling viij pen.

For all letters of horning of quhatsumever qualitie, except letters of law-bor-
rowes, and criminall letters xxj shilling viij d.

For an relaxation vj shillings viij d.

And gif maa nor ane be insert, the like price of everie persone to bee re-
laxed, or compositione for them, at the discretion of the keiper of the signet.

Prices set downe to the signet for signatoures passing the privie
and great seales.

For ane legitimation vj shillings viij pen.

For signatoures of infestments of landes, within five marke lande of auld ex-
tent vj shillings viij pen.

For ane remission to ane person onelie vj shillings viij pen.

And gif it be to maa nor ane, als mony half markes as they ar persones,
or composition therefore, at the discretion of the keiper of the signet.

For ane infestment of ane five marke land of auld extent xij shil. iij d.

And for sa mony maa marke landes as the signatoure conteinis propor-
tionallie : Providing, that quhatever be the extent of the landes, the samen
not being stiled ane barronnie in the infestment, the highest price for the
signet sall not exceed 1 shillings

For ane or maa barronnies of land, contained in the signatour, quhilks
are nocht unite in ane Earldome nor Lordschip, for the haile signa-
tour iij poundes

For halfe ane baronnie, swa styled in the signatour xxx shillings

For ane Earldome, or ane Lordschip of dignitie, having vote in parlia-
ment, including never sa monie barronnies vj poundes

For ane comprising, quhilke exceedis nocht ane thousand markes

— — — — — vj shillings viij pennies.

And if the same exceed that sum, to paye proportionallie, providing that
the heichest price exceeds nocht 1 shillings

For ane bishoprick, abbacie, or priorie, exceeding an thousand pounds of
zeirle rent to the possessour vj pounds

Being within ane thousand pounds l. shillings

Nathing to be tane for reservations of liferentes contained in the signa-
tures, in respect the reservation is na newe benefite to the receaver, ex-
cept quhair the resigner is a bastarde. In the quhilk case, respecting his
Majesties prejudice be the resignation, quha urtherwise might succeed to the
landes resigned, be the present possessours decease without lawful aires, sik
reservations sall pay according to the price before set downe for the lands
resigned, comptand alwayes the man and wife to be ane person.

Nathing to be tane hereafter for onie tailzies except the foresaid price, Tailzies.
according to the quantitie of the lande resigned, in respect the fear may al-
ter his tailzie at his pleasure, except quhair the fear that resignis the lands
is bastarde. In quhilke caise, the like price may be tane for every persone
contained in the tailzie, as it is set downe for the quantitie of the land re-
signed.

For infestments conteining patronages of benefices never before dispon- Benefices.
ed, nor annexed to thay landes or new infestments of heritable offices, the
land is to pay according to the quantitie and rate before set down, and the
patronage, gif it be of ane onlie benefice, the ane half of the duetie of the
landes. Gif their be maa, to pay the said haill price of the landes for the Offices.
saides patronages. Quhilk price the keiper of the signet sall not exceed.
Siklike for new and heritable offices.

Prices set downe to his Hieness Privie Seale, to be tane hereafter,
of sik giftes and uther signatoures quhilk passis the said seale
allenary.

| | |
|--|---------------|
| For escheits of zeamen men, and uther mean persons | xx shillings |
| For escheits of landed gentlemen and substantialious burgesses | xxx shillings |
| For escheits of Baronnes | xl shillings |
| For escheits of Earles and Lordes | iiij poundes |
| For their liferentes, <i>respective</i> —dowble price | |
| For presentations to Vicarages | xx shillings |
| For presentations to Parsonages | l. shillings |
| For respettes to zeamen men, and uther meane persones | xxx shillings |
| For respettes to landed gentlemen, and substantialious burgesses | xl shillings |
| For respettes to Baronnes | iiij poundes |
| For respettes to Earles and Lordes | v poundes |

And gif there be maa persons contained in the signature, to pay *per capita*,
according to their rankes.

For the wardes and marriages, non-entresses, and relieves of landed men, un-
der Baronnes, included in ane signatour iiij poundes

| | |
|---|---------------|
| For the wardes, marriages, non-entresses, and relieves Baronnes | vj pounds |
| For the like of Earles and Lordes | x pounds |
| For the warde allane of gentlemen | xxx shillings |
| Of Baronnes | iiij pounds |
| Of Earles and Lordes | v pounds |
| For the marriage allane of simple gentlemen | xxx shillings |
| Of Baronnes | iiij pounds |
| Of Earles and Lordes | v pounds |
| For the non-entresses allane of meane landed men | xx shillings |
| Of Barronnes | xl shillings |
| Of Earles and Lordes | iiij poundes |
| For giftes of prebendaries or chaplanaris | xxx shillings |
| For tutories | xxx shillings |

For the multitude of denuntiations included in ane signatour of escheitte, or liferent, na payment but for the gift only, in respect they can import but ane gift of escheit allanerly.

For presentations to prelacies, legitimations, signatores of infeftments of Baronnies and uther landes, remissions, and sik uther writtis as passis first the signet, the keiper of the privie seale sall take for them allanerlie the double of the price quhilk ilk ane of them payed to the signet.

In tailzies, reservations, patronages, heritable offices, erections in free Burrowes, and siklike, to take payment according to the order and proportion of the signet.

Anent the Chalmer-fees.

It is ordained, That na signatoures hereafter sall pay Chalmer-fee except resignations and confirmations irredemable allanerly, and of sik landes as are neither of his Majesties property, nor temporality annexed, quhilks are declared to be free of all sik fees in time coming.

Prices set down to the Great Seale.

THAT the keiper of the great seale exceed not the quadruple of the signet, or double of the privie seale, under the foresaid paine.

That to this effect the keiper of the signet sall, upon the backside of the prent of the signet, set down the price quhilk he receives for everie precept, and for all uther letters after his name. Likewaies the keiper of the privie seale his price for precepts and uther letters after *per signaturam*, that theirby the keiper of the greate seale pretend na occasion of ignorance. Sik-like that the said keiper of the greace seale set down his price in the foreface of everie tag quhairunto the said seale sal be appended. And that thereafter

their be na drink silver exacted fra the parties, uther nor he will be contente to give at his pleasure and discretion. And ordains ane herauld, maisser, or uther officiar of armes, to passe to the Mercat Croce of the said burgh of Edinburgh, and their be open proclamation mak publication of intimation of the premisses to all and sindrie his Hienes lieges, quhairthrow nane pretend ignorance theirow. As alsua, to command and charge the keipers of the signet, privie and greate scales, Ischers of his Hienes chalmer, and all uthers quhome it effeirs, to conforme themselves to the will and direction of the saides commissioners, signified to them in manner foresaid; and on na waies tak upon hand to alter or contravene the same in onie point hereafter, as they and ilke ane of them will answer to his Majestie, upon their obedience, at their uttermost charge and perrel, and under the pain of deprivation of them fra their offices, certifieing them an they failzie, that they sal be deprived fra their saides offices, and utherwaies punished in their persones as effeirs.

Apud Edinburgh, quarto Junij, Anno 1597.

THE Lords of secreit Councell and Checker, following the commission given to them be his Hienes and his Estaites, laitlie conveyened at Dundie, anent the ordour taking with the exorbitant prices of all sorts of writes and letters usuall among the lieges, and likewaies of the scales, registers, and chalmer fie, quhilk a greate number of the same mon passe, procuring daylie baith private grudges and public exclamations against the tolerance and withgang given to sik shamefull extersion and abuse, highlie to his Majesties dishonour and offense, and to the manifest undoing of the puire anis of this Realme, constrayned to have adoe with the saides writes: Have, for remeid of that abuse, decerned and ordaned in time coming, and quhill a mair particular and solide ordour may be taken theirin, that all and quhatsoever Clerkes of Session, Justice, secret Councell and Checker, Clerkes to quhatsoever Commissar, Admiralles, Schireffs, Stewartes, Baillies of regalitie and royaltie, Provestes and Baillies of quhatsumever his Hienes burrowes, and of all uther courtes or judgements within this realme, all writers to the signet, privie and great seals, all keipers of quhatsoever rolles, registers, and recordes, all public notares, and uthers writers quhatsoever, quha sall hereafter register and inroll, forme, extract, writ, or give out for payment to ony of his Hienes leiges, ony signatour, contract, obligation, decret, act, or ordinance of ane courte or judgement, chartour, saising, or other evident, billes, letters, or uther writtes quhatsumever of any importance to the receiver, sall subscribe with their handes the said write, and subjoyne to their names the just and ordinar price quhilk they receive fra the partie for their paines, to be a testimonie of their discretion in valuing of their travelles

taken in the saidis writtes, and to give further licht to the saids Lords quhat constant prices they may set upon the like in time to come, under the paine of deprivation from their offices, and punishment of their persons at his Hienes further pleasure, in caise of failzie. And ordains letters to be directe, to make publication of the premisses to all and sindrie his Hienes lieges, quhairthrowe nane pretende ignorance thereof.

FERCOSTA, ane Italian worde : Ane kinde of schippe or little boate. In ane privilege granted to the burgh of Dundie, for reparation and bigging of their porte and haven be King James the Second, in the zeir of God an thousand four hundred fifty-aucht zeires, and of his reign the twentie-twa zeire, mention is maid of ane *Fercost*, quhilk is inferiour in birth and quantitie to an schip, because the imposte and taxation laid upon ilke schip is ten schillings, and upon the *Fercost* twelve pennies, and of everie créar, busch, barge, and ballinger, five schilling, and ilke great boat six pennies.

FERDINGMANUS, ane Dutch word, ane penni-maister, or thesaurar. *Stat. gild. c. 5.*

FIDELITIE, made to superiours and over-lords.—*Vide Homagium.*

FINIS, finance, or composition maid with theeves. Statut. 2. Robert Bruyse, Item 9. In the quhilk place it is called *rachetum*, or thift boat. *Finis curia*, ane composition quhilk onie man gives in ane court, sik as the justice aire, to the King. *In registro*, 28. December ane thousand five hundred fourty-an zeirs, the Thesaurar contrar the Burgh of Perth. “Finem facere cum rege,” to fine with the King, or to make ane finance, and satisfie him for ony trespasse committed against him or his lawes. “Ass. reg. Dav. cap. 2. lib. 4. cap. 3. c. si vir. 16.” or “finem reddere regi,” to pay ane fine or composition to the King for ane crime, sik as thift boat. “St. 2. Ro. Br. c. Item ordinat. 9. Finem facere cum molendinario de multura,” to agree and com-pone with the miller for the multer. “Statu. Willh. cap. item statuit quod detentor, 11.”

FIRMARIUS, ane mail-payer, ane mailer, or mail-man, “leg. burg. c. si firmarius, 56. quo. attach. c. nullus, 26.” *Firma* signifies the dutie quhilk the tennent paies to the landis lord, quhiddir it be silver-maill, victuall, or uther duetie. *In statutis gild. c. 48.* In the quhilk signification, it is commonly used in the French lawes.

FORENSIS, from the French word *Foraine*. In the burrow lawes of this realme, signifies ane un-free-man, quha dwellis not within burgh, or out-dwelland man, and therefore is called *rure manens*; quha dwelland aland-ward, hes na priviledge or immunitie within burgh. Commonlie all strangers

**Rure ma-
nens.**

are called *forinseci*, or *foraines*; utherwaies *advena*. Quhairanent it is statute, that na burges dwelland in burgh sall harbourie onie strange man in his house langer nor ane nicht, without borrowes and caution. "Leg. burg. cap. nullus in burgo, 88. quoniam attach. cap. nulli, 47." *Servitium forinsecum* Servitium signifies sik service as the vassall or tennent suld doe to his over-lord and maister, fra hame or in time of weirfaire. In England, they quha are nocht borne Englishmen, are called *alienes*: quha injoyes nocht libertie within the realme, except they be *Denized*, quhilk word appears to be deriven "a Danis, *Denized*. "quasi danisatus," that is maid lauchfull and free, as onie Danesman was, *Ambani*. quhen the Danes did occupie and possesse ane greate part of that Realme *Alhini, jus Albinagii*. And in France they are called "ambani, or alhini, quasi alibi nati," strangers nocht borne within the Realme of France, quha therefore deceaseand in France, without lauchful succession of their bodies, hes na power to make testament. For their gudes and geare are nocht given to their aires or successours, bot are confiscat to the Kingis use, be the law quhilk is named "Albinage, ius albinagij. Chessan. in consuetud. Burgund. Rubric. 21. § verb. "des confiscationi." Nu. 37. in the actes of Parliamente, Marie, p. 8. cap. 66. it is called *droict d'Aubeyne*.

FORESTARIUS, ane forester, or keiper of woodes, to quhom, be reason of his office, perteins the bark and the hewen branches. And quhen he rides throw the forrest, hee maie take ane tree als heich as his awin head, leg. forest. ca. 10. *Foresta* is called ane large wood, without dyke or closure, *Foresta*. quhilk hes na water. *Sylva* is ane wood neare adjacent to ane flude of water: *Sylva*. bot quhen the samin is inclosed with dike or hedgings, is called ane parke, "Chessan. in consuetud. Burgund. tit. des Forests, 13. in prin. per. gl. in. c. *Parcus*. "cum dilecti. de donationib. Felin. in c. Rodolph, extr. de rescript. Nu. 21." Quhair *foresta* is called a place quhairin are included wylde beastes, and quhair some hes libertie of hunting. Bot quhair thair is ane flude of water, it is *Sylva*. And beand circled about and environed with watters, *Insula*. And *Insula*. inclosed with dikes or hedgings, "parcus. Ja. Andr. in d. cap. dilecti." "In- *Libera fores-* "feodatus in liberam forestam," infest in free Forrest, hes power to hunt, ta. halk, and cutte trees, quhilk we call "potestatem venandi, aucupandi, et se- "candi," quhilk libertie na person maie use bot be speciall licence granted to him, "vid. Varena, vid. Vanison, vid. Werd."

FORISFACTUM, ane unlaw, quhilk utherwaies is called "amerciamen- tum. lib. 1. c. dos autem, 19 Stat. Alex. c. si quis conquestus, 9. lib. 4. c. 3. "leg. burg. c. forisfactum, 42. vid. "Amerciamentum." It is taken for for- nication committed be ane woman being ane aire femaill within waird, "ut "cum foemina dicitur forisfacere de corpore suo," to forfair or abuse hir bodie, *vide Putagium*. Item, it signifies quhatsumever fault, trespassse, and crime, and is called forefault in the actes of Parliament, James II. 2. August, c. 6. And quhair it is written "pro vno forisfacto non debet esse nisi vnum amerciamen-

Forisfactum
plenarium
Regis.

"tum. leg. burg. c. de uno. 3." In ane vther place it is said, "pro vno delicto, non debet esse nisi vna misericordia. Ass. reg. Da. C. ad hoc. 28." That is, for ane fault their suld be bot ane vnlaw. And in the English lawes, "Hen. III. in carta de Forest. c. 15. all outlawes for the Kingis forestes sall retorne to his peace, and sall find to him sure pledges that they sall nocht do onie forefault or wrang in his forestes." "Forisfactum plenarium regis," may be extended to the deth, as "plenaria justitia," quhilk suld be execute upon him quha stops the sleuthhound in persewing of theeves and theft, Lib. 4. c. et si quis, 35. And it is statute, that nane sall stop the Kingis burgesses to bye and sell freelie throwout all the partes of the Realme, "super plenum forisfactum regis, leg. burg. c. si burgenses, 141. vel super plenarium forisfactura, lib. 4. c. statutum, 38. Stat. Wilh. c. Item statuit. 19," conforme to the quhilk constitution, he quha troubles or molestis merchandes dwelling within burgh to use their freedome and priviledges, may be accused as an oppressour of the Kingis lieges, James V. p. 4. c. 26.

FORISFAMILIARI, forisfamiliar, put furth of his fathers house, or made free, and delivered furth of the fatherlie power; the sonne is called to be forisfamiliar be the father, quhen he with his awin consent and gud will receivis from his father onie landes, and is put in possession theirow before his fathers decease, lib. 2. c. porro. 33, and is content and satisfied theirow. Swa that he nor his airs maie nocht claim or crave onie mair of his fathers heritage, de Judicibus, capit. item nota, 115.

FORESTALLERS, *vide Regraters.*

FORTALITIUM, Ja. II. p. 3. c. 3. Stat. 2. Rob. Br. c. Item, ordinatum, 8. Ane fortalice, ane castell, and properlie ane house or towre quhilk hes ane batelment an barmekin, or ane fowsie about it, 7th Feb. 1566. Lord Fleming contrair James Rosse.

FORTHOCHT felony, "præcogitata malitia," quhilk is done and committed wittinglie and willinglie after deliberation and set purpose, and is different from "chaudmelle, quia ut scribit Cicero, l. 1. offic. in omni injusticia, "permultum interest vtrum perturbatione aliqua animi, quæ plerumque brevis est, et ad tempus; an consulto et cogitato fiat injuria. Leviora enim sunt ea, quæ repentino aliquo motu accidunt, quam ea quæ meditata et præparata inferuntur."

Cabalum.

FOSSA, an pit or fowsie. *Furca*, an gallous, in Latine *cabalum*, quhilk was the first institute, and granted be King Malcolme, quha gave power to the Barrones to have ane pit, quhairin wemen condemned for theft suld be drowned, and ane gallous quhairupon men thieves and trespassoures suld be hanged, conforme to the doome given in the Barrone Court thereanent,

Hector Boetius, l. 12. "Erectio furcarum est meri imperii, et altæ justiciæ,
 "et significat dominium æris, quia suspensi pendent in ære, et merum impe- Merum Im-
 "rium consistit in quatuor, sicut sunt quatuor elementa. In ære, vt hi qui perium.
 "suspenduntur. In igne, quando quis coburitur propter maleficium. In
 "aqua, quando quis ponitur in culeo et in mare projicitur, vt parricida; vel
 "in amnem immergitur, ut fœminæ furti damnatæ. In terra, cum quis de-
 "capitatur et in terram prosternitur, Chessa in consuetud. Burgund. Rubric.
 "l. sect. 1. verb. an territoria, Nu. 14. et rubric. 1. sect. 8. Nu. 2. porro
 "jurisdictio dicitur notio, quæ juri magistratus competit. Mistum imperium Jurisdictio,
 "est potestas quæ jurisdictioni inest. Merum autem imperium est jus gladii, Mistum im-
 "vel alicuius gravioris coercionis nominatim lege concessum, Cuius. l. 4. de perium.
 "feud. tit. 19."

FRIEBORGH, "liber plegius, vel fideiussor, quem Galli francum plegium
 "vocant." In the auld Britton lawes, "Bopher vel Bores," is that quhilk we
 call borrows, burgh, or cautioner. And Aluredus, King of England, divided
 England in "satrapias, centurias, et decurias," as sall be declared in the worde
 Schiref; and ordained that *decuria* suld comprehend ten persones, and *centuria*
 suld contein 100 persones, quhairof ilk ane was cautioner and sovertie for
 uthers; in sik sort that the haill number and ilk ane of them was answerable
 for the fault and deede of ony ane of them, and swa was called "freeborgh,
 "free-pledge, or cautioner."—"Vide Antiquas leges Brittonum."

FURCHE, ane word quhairof I find na mention in the written lawes of
 this realme, nor of onie uther cuntrie, and zit is used in the forme and
 ordour of the Chancellerie, from *furca*, ane forke. For quhen onie person is
 served and retoured narrest and lauchfull aire to onie of his predecessors, of
 ony landes halden in chiefe of ony uther superiour then the King, the direc-
 tour of the Chancellarie causis his clerkes direct to the said superiour three
 preceptes, commanding him to give saising to the person retoured of all and
 sindrie the landes contained in the retour, he doing therefor to his superi-
 our all quhilk he aucht to do of the law. Of the quhilk preceptes the second
 is called "Memimus a forma verborum qua præceptum concipitur." For the Memimus,
 precept bearis that the King remembers that he directed his first precept and
 command, quhilk was nocht obeyed, quhairof he mervailis: And therefore
 zit as of before commands the superiour to give saising. The third precept
 is called *furch*, for quhat cause I knaw nocht certainlie; bot like as ane fork
 hes twa grains, this precept hes ane alternative command of twa parts, for
 the King commandis the superiour to give saising, or else he certifies him
 he will command the Shireffe to give the samin. "Itaque hoc præceptum
 "est furcatum, vel bifurcatum, in eadem significatione, qua barba bifurcata,"
 quhilk is divided in twa taitis or parts. And in French *furche* is called cloven
 futed, or forked.

G

GALENES, "Lib. 4. c. si quis, 37. c. statuit. 66." Ane kind of mendis, assithment, or satisfaction for slauchter. Of the quhilk worde I find na mention in onie uther place, or law of uther cuntries.

GANGIATORES, Iter. camer. c. gangiatores, 14." signifies them quha suld mark the claith, breade, or barrells, before they be sauld, with the mark of their office; or tryis or examinatis all measures and weights, baith dry and weete; for the French *Jage*, is that quhilk we call jug, met, or measure.

GARBA *sagittarum*, ane schaife of arrowes containing 24, utherwaies called "schaffa sagittarum. Stat. 2. Rob. Br. c. ordinatum est, 27."

GARCIFER, ane French word. Ane *Garson*, an servand quha servis in the myln, ane myln-knave, "leg. burg. c. quicunque, 64."

GILDA, ane societie and companie of merchandes. For in the auld Britton lawes, *gilder* signifies the ordour of societie of religious men, or of craftesmen. "Vide Antiquas leges Brittonum, verbo Contubernales."

GIRTHOLL, girth, sanctuarie, in Latin *asylum*, "ass. reg. Da. c. Si quis in aliquo, 27." *Asylum* is deriven from the Greeke, "a particula privativa, et Silao, h. c. traho. gl. in l. si quis, 17. ff. de ædilit. edict." Because it is not leasum to draw furth onie person furth of the *girth*. Quhairanent sindrie acts of Parliament are maid, conforme to the law of God.—Exod. 21. 13.—Joshua, 22. 1. &c.

GLEBA, an gleibe given and granted to kirk-men and ministers of the Evangel.--Vide Mansus.

GVERRA, "Lib. 2. c. sunt quidam, 72. Stat. 1. Rob. Br. c. 17. Stat. 2. Verra. "Ro. B. c. ordinatum est, 27." Utherwaies called *Verra*, battel, weir, and signifies nocht onie public weire and hostilitie, quhilk is proclaimed and denounced be the lauchful authoritie of the Prince, bot also privat deadlie feede, quhen onie particular person wauld revenge onie private injurie done to him. For it is statute be King David the Second, "quod nullus de cætero moveat guerram contra vicinos suos quoscunque, sub pœna plenariæ forisfacturæ 6. November 1357." Mention is maid of courtes of Guerra, Ja. III. p. 8. c. 69. quhilks were halden be schireffes, stewards, baillies and other officiares.

Bot quhat was the speciall jurisdiction belongand thereto I knaw nocht, and findis na mention theirow in onie uther part of the lawes of this realme, alwaies as it appearis that they wer halden be the ordinar judges foresaides, anent strife, debates, crimes, and trespasses committed betuixt familiar and domestik persons, subject to ane maister, within the jurisdiction of the saides judges, conforme to the lawes of the fewes in "sect. ult. de pace tenend. li. 2. de "feud. Si ministeriales alicujus domin. inter se Guerram habuerint: comes "sive judex, in cujus regimine eam fecerint, per leges et judicia, ex ratione "prösequatur." Quhilk forme of courtes being particular justice courtes, was prejudicial to the jurisdiction of the justice and his deputes, and grievous to the lieges of this realme, and theirfore are discharged be King James the Third, in the place foresaid.

GYSARUM, ane hand axe. "Leg. Forest. cap. sciendum est, 67." quhair it is statute and ordained, that all men of the age betuixt sextie and sixteen sall have armour, conform to the quantitie and valour of their lands and moveable gudes, that is, he quha hes fiftene pounce lande, or fourtie markes in moveables, sall have ane horse, ane habergeon, ane bonnet of iron, ane sword, and ane dagger. And he quha hes fourtie shilling land, or abone, within ane hundred shilling land, sall have ane bow, arrowes, dagger, and knife. And he quha hes lesse than fourtie shilling lande, sall have *gysarum*, quhilk is called ane hand axe, ane bow and arrowes. And all uthers quha suld, or may have armour, sall have ane bow and arrowes.

H

HAIMSUKEN, "lib. 4. c. raptus, 9. in fine, quo. attach. c. de caetero, 48. "Stat. Wil. c. item, stat. 9." ane Dutch word. For *baim* signifies an house or habitation quhair ane dwellis, and quhair he hes his winning, rying, and lying. As we say, ane man is at hame, or nocht at hame. In the quhilk signification, Cuninghame is called the Kingis house or hame, speciallie quhen the Kingis of this realme, quha of before did dwell in the Iles, came to the maine land to dwell, and remaine in Doundonald and uther places. *Suchen*, in the Germane toung, signifies to seike or search, persew or follow, as quhen ane gives up kindnes to ane uther, he says, "Harr, harr, Ich wol euch suchen." swa hame-suchen, or hame-sucken, is quhen onie person violentlie, without licence, and contrair the Kingis peace, enters within an mans house, or seiks him at the same, or assailzies his house, (as it is written in the best buikes) quhilk crime is punished as ravishing of women, "quo. attach. c. si quis aliquem, 50. Stat. Wilh. item, stat. 10." quhilk is esteemed an greate crime, contrair the common weill, quietnes, and peace of the cuntrie, "quia unicuique

“ domus sua est tutissimum refugium : Ideoque de domo sua nemo debet
 “ extrahi. l. sed et si 21. ff. si quis in jus vocat, quod verum esse in causa
 “ civili, non autem in criminali, notatur in gl. ibidem, quid sit domus.—Vide
 “ L. 1. ff. de agnoscend. liber.”

De quatuor
 modis tenen-
 di terras.

HAWBERT, there is foure maners of halding of landes outwith burgh. Sum landes are halden be the kirk, “ nomine pure eleemosynae,” and paies nothing bot “ devota animarum suffragia,” as was used in the blindness and papistrie ; uther are halden in few, or few-ferme, of the King, kirk, barrones, or uthers, quhilkis payes ane certain dewtie called *feudifirma*, few-ferme ; uther are halden blenche be payment of ane pennie, an rose, an paire of guilt spurrs, or sum uther dewtie quhen it is asked in name of blenche, or “ nomine “ *albae firmae* ;” uther landes are halden be service of warde and relieve, and the aire heiroyf beand *minor*, is in the gairde, that is wairde, cnstodie, and keiping of his superiour, with all his saides landes, untill he be *major*, and of perfite age. And siklike, his marriage, beand *major* or *minor*, and nocht married before the decease of his predecessour, pertainis to his superiour, vide Varda. Landes halden in this last forme and maner are called “ feodum de Hauberk, or “ Haubert, or feodum militare, de maritag. c. diversa, 7. ass. reg. Da. c. “ statutum fuit, 32.” or “ feodum hauberticum,” or “ feodum loricatum,” because it is given upon condition that the vassal, possessour theiroyf, sall cum to the hoist and armie with jak and armes ; for “ lorica a loro,” signifies an abulzement made of cordes, and “ haubert” signifies ane kinde of armour maid of mailzies, or circles like ringes, called an haubergion, conform to the common proverb, manie mailzies makis an haubergion, manie littles makis an meikle. Of the manner of tenures in the English lawes, read Littleton, and in the Normand law, lib. 5. c. 3. cum. seqq.

Lorica.

Haubergion.

HAIMHALDARE, “ vindicare, actione reali repetere,” to repeat and seeke restitution of proper gudes and geare, and bring the samin hame again, “ quo. attach. c. 4.” as lauchfull and haimhald cattell, “ mod. ten. cur. c. 13.” and haimhald lint, or haimhald hemp, is that quhilk growis at haime within this realme, and is opponed to lint and hempe qnhilk is inbrocht furth of uther cuntries. “ Hamhaldatio catallorum,” is quhen onie man seikis restitution to be maid to him of his awin gudes and geare, wrangously taken fra him, quhairoyf frequent mention is maid in the auld lawes of this realme. And he quha seikis the said restitution suld sweare in this maner, ane buike beand put within the hornes, or upon the forehead of the beast that is claimed, before twa lauchful witnesses, that the said cattle acclaimed be him did wander away from him, and that the samin was nocht given, sauld, or onie maner of way annalied be him to onie kind of person.—Vide “ Catalla.”

HARA porcorum.—Vide “ Creffera.”

HERREZELDA is the best aucht ox, kow, or uther beast quhilk ane husbandman, possessor of the aucht pairt of ane dauach of land, (four oxen gang) dwelland and deceasand theirupon, hes in his possession the time of his decease, quhilk ought and suld be given to his landislord, or maister of the said land, " Lib. 4. c. si quis. 22. ass. reg. Da. c. si quis. 41." for " her" in Dutch, Here. in Latin " herus, dominus," signifies ane lord or maister, and " zeild" is called Zelde. ane gift, tribute, or taxation, as in the auld actes of parliament maid be King James the First, it is written, that ane zeild was gaddered for the reliefe of him out of England. And ane uther zeild was collected for resisting the rebelles in the North. Swa " herrezelda" is ane gift given be onie man to his maister and lord, quhilk suld be his best aucht, 17th October 1470. Quhilk is conform to the auld lawes, " lib. 2. c. tenentur 35," quhair ilk person makand his testament suld recognosce and acknowledge his maister with the best thing he hes. Swa it is manifest that the herrezelde is given, be reason of the tennents deceis, to his maister as ane gift for acknowledging and honouring of him, and therefore in the civil law is called " laudemium," " a laudando domino." Item, in the auld Saxon and Dutch language " herr" s an hoist, armie, or weirfare. Swa (as some thinkis) " herrezelda" signifies that quhilk is given to the lord or maister, passing to the hoist, or be reason of weirfare. For sik small husbandmen having onely foure oxen-gang of land, and thereby, be reason of their poverty, nocht able to passe to weirfare in proper person, suld help their master passand fordward their- unto; likeas " herischulda" is the pain of him quha obeyis not the pro- Herischulda. clamation made for weirfare, for " schold" is " debitum," or debt, and " heribannum" is ane charge or proclamation maid for weirfare. " Cuia, Lib. 1. Heriban- num. " de feud."

HILDA terræ, hida terræ,—an pleuch of land. Vid. Carrucata.

" **HOMAGIUM**, dicitur quando aliquis promittit se esse hominem ali-
 " cujus domini, et stare et habitare, ubi voluerit dominus. Et super hoc facit
 " homagium, id est promissionem, ut sit suus homo. Vel homagium dicitur
 " fidelitas hominis, pro rebus temporalibus facta domino. Chessan in con-
 " suetud. Burgund. rubric. 3. § 1. verb. des fieds. et in § 3. nu. 3." It is a
 band of man-rent, quhen onie person promises to serve ane uther in sik sort
 that he sall be friend to all his friends, and foe to all his foes, against all
 deadlie. " Lib. 2. c. prædictis. 60. le. Forest. c. quando 60." It is therefore
 called " hominum," and suld be maid be the vassall, being minor or major,
 to his over-lorde. Lib. 2. d. cap. 60. And the samin being made generally,
 without exception of any man, is called " homagium cum ligeantia factum."
 Vid. Ligeantia. Homage differs from fidelitie, first be reason of the persones
 makeris theirow, for weemen makis na homage but onelie fidelitie, lib. 2. c.
 prædictis. 50. Because homage concerns service specially in weirfare, to the
 quhilk weemen are nocht subject. And likewaies consecrat bishops makis

Forme of
fidelitie.

onellie fidelitie for their landes and barronies, Lib. 2. c. fieri 61, in this form; I sall be leill and trew to zow my liege lord and schir N. King of Scotland, and sall nocht heare zour skaith, nor see it, but I sall let it at my power, and warn zow theirow, zour counsell conceill and heill that ye schaw me: The best counsell that I can to give zow, when ye charge me "in verbo

Forme of
homage.

"Dei," and as help me God, and the halie Evangell. The second difference is be reason of the forme and manner; for he that makis fealtie kneilis nocht on his kneis, but he that makis homage kneilis down; utherwise the form of homage maid be barrones to the King, and the form of fidelitie maid be them to the King are nocht far different; for the forme of homage maid be them is this: I become zour man my liege King, in land, lith, life, and limb, warldlie honour, homage, fealtie and lawtie, against all that live and die: Zour counsell conceiland that ze schaw me; the best counsell schawand, gif ye charge me; zour skaith and dishonour not to hear and see, bot I sall let it at all my gudlie power, and warn zow theirow; Swa help me God. The forme of fidelitie maid be the barrones to the King is this: I sall be liell and true to zow my liege Lord, Sir N. King of Scotland. I sall never see zour skaith, nor hear it, bot I sall let it at my power, and warn zow theirow. Zour counsell schawin to me I sall conceill; the best counsell I can I sall give to zow when ze charge me theirow. Swa

For quhat
thinges ho-
mage suld
be maid.

help me God.—"Fiunt autem homagia de terris tenementis liberis tantummodo et servitiis; de redditibus assignatis in denariis, et aliis rebus, pro solo vero dominio, non solet fieri homagium, excepto domino principi, lib. 2. c. fiunt. 66. Ita hic locus corruptus et difficilis legi debet." Concerning the exposition of the quhilk, it is to wit, that all homage is maid to

Homagium
ligium et
non ligium.

the over-lord and maister, quhairow sum are maist chiefe and principall, sik as the King, to quhom without onie exception "suprema fides, quæ nullam exceptionem patitur, jure optimo debetur." Uther over-lordes are inferiour and subalterne, to quhom their vassalles are bund and oblished, and suld make their homage. And swa their is twa kinds of homage, "aut enim est ligium, aut non ligium, vid. Ligeantia." Baith the ane and the uther may be maid "pro terris, tenementis, annuis, redditibus." Because ane freehalder of landes, tenements, and annual-rents, maie make homage to his immediat superiour for his landes or tenementes, exceptand the King and his elder over-lord, quhilk is "Homagium non ligium, lib. 2. c. fieri. 61. leg. forest. c. quando. 60." Or he may make homage to his over-lorde simpliter, without exception of onie person or uther over-lord, quhilk is "homagium ligium." "Pro solo dominio," na homage can be maid, bot onellie "dominio principi," quhilk is "homagium ligium," because it is upon condition and covenant, that he to whom it is maid sall be maister, lord, and maintainer allanerlie to the maker theirow. And he quha makis the samin sall acknowledge him and nane uther to be his lord and master, for his maintainance, protection, and defence, quhairanent he makis exception of na person, and swa this kind of homage is maid to the King allanerlie,

" pro solo ipsius dominio, quem solum et nullum alium omnes debent agnoscere pro solo domino. Hic locus admodum difficilis me diu multumque torsit, neque aliter me hinc extricare possum, sed in hac re suum unicuique liberum esto iudicium."

HUESIUM, Hoyestum, ane French word, Oyez ; in Latin " audit," ane hoyes or crie used in proclamations, quhairby an officiar of armes, or messenger, dois convey the people, and foirwarns them to hear him, " de maritag. c. sciendum. 17. de judic. c. 57." It is called also an outhoy or crie, " leg. forest. c. si quis, 91." And ane thiefe suld be taken with the blast of ane horne, with clamour, or hues, and presented to the Kingis bailie. And gif thereafter he flies away, he may be slain leisumly, and hanged up on the next gallous, " lib. 4. c. si quis latronem. 33." Quhilk in an pairt is conforme to the Acte of Parliament, Ja. VI. p. 1. c. 21. And in the lawes of England, ann. 4. Edward I. he quha followis not the hue raised for apprehending of malefactoures sall be accused therefore.

HUSBANDLAND conteines commonlie 6 aikers of sok and syth land: That is, of sik land as may be tilled with an pleuch, or may be mawed with an syth. For as sum auld writers testifies, the Earl of March, for the time, caused his servand Simon, or Sim Salmond, to divide the hail land in the Mers into husband landes; ilk husband land conteining 6 aikers, quhair pleuch and syth may gang. Quhat Earl of March this was I am nocht certain, bot I find that ane called Simon Salmond is forefaulted with Alexander Duke of Albanie, Earl of March, Mar, and Garrioch, Lord of Annandale and of Man, brother to King James the Third, 8. Julij. 1483. Bot the Lords of Councell esteemis the zeirlye mailles, fermes, and dewties of ane husband land to five markes, in Registro, 1. Decemb. 1545. And ane uther husband land lyand beside Dunbar, they esteeme it to 14 bolles bear, and 3 bolles quheit, in Registro, 14. Feb. 1544. And ane uther husband land to 3 pounde. Swa I find na certaine rule prescried anent the quantitie and valour of ane husband land.

I

INFANGTHEFE, lib. 1. c. 3. ane Dutch word, quhairof I find divers interpretationes: for in the auld lawes of the Britonnes maid be King Edward, infangthiefe is ane liberty or power perteing to him quha is infest theirwith, to cognosce upon theft committed be his awin man, taken within his awin dominion and lands, like as in sindry auld buikis containand the lawis of this realme. " Infangthiefe dicitur latro captus de hominibus suis

"*propriis, saisitus de latrocinio.*" And Outfangthiefe is an for a thief quha cumis fra an uther mans land, or jurisdiction, and is taken and apprehended within the lands pertenant to him quha is infest with the like liberty. In sindry uther buiks it is written that infangthiefe is an liberty to sit and deceid upon theft committed within the jurisdiction of him quha is infest theirwith, be his awin man, or ony uther man quhatsuever, taken theirwith, within his awin jurisdiction. And Outfangthiefe is power or liberty to reduce, replege, and bring hame to his awin court all thieves being his awin men, and committand theft within his awin boundes, quha are fugitive and taken within ane uther man's jurisdiction, with the fang, that is, hand haveand and back bearing, "Lib. 4, c. Si. quis 11. Quoniam attach. c. nullus " 22." Quhilk fang in the civil law is called "*furtum manifestum.*" Bot sindry uthers are in the contrair opinion, affirmand that it is not leasum to ony man heaveand liberty of outfangthiefe to repledge or reduce his awin man, taken without his awin libertie for theft, to his awin court, and there to do justice upon him; because all thieves suld underly the law, and be judged be him within quhais jurisdiction the theft is committed, in sik form and maner as is statute anent slaughter and punishment thereof. Ja. 1. p. 2. c. 89. Amangst the interpretours of the civil law I find the like controversie in this matter, "For. Bart. in l. Sidom. 48. Nu. 2. ff. d. furtis. Quocunq. " (inquit) in loco reperitur fur cum re furtiva, ibi potest puniri. Veluti " *furtum faciens Floentiae, si reperitur in alia jurisdictione, veluti Mediolani, " cum furto, potest a Mediolanensibus puniri.*" Quhais opinion sindry Doctoures followis, as writs "*Chessanæus in consuetud. Burgund. Rubr. Verb. " simple larrecin. Nu. 15.*" Albeit sindrie uthers ar in the contrair opinion, allegand that the thiefe suld be punished in the place quhair he committis the theft, "ut in additione ad Bartol. in d. l. 48. Conforme to the quhilk, it is statute be the law of this realme, that ane thiefe of stollen woodde taken with the fang in an uther Lords lands, suld be arrested with the woode, and sall suffer the law in his court fra quhom the woode was stollen. Ja. 1. p. 2. c. 34. Mairover, ane thiefe is ordained to be punished in the place quhair the theft was committed, because the crime may be best tryed there, Stat. 2. Rob. Br. c. 4.

Furtum manifestum.

INFENSARE curiam. That is, quhen the Judge informis the suters in sik things quhair of they are ignorant. "Quoni. attach. c. ubi ab aliqua, 10." Like as the civil law. "Judex potest supplere ea quæ advocatis in jure " desunt."

The form of the justice aire, or court.

ITER, from "*Itinerare, h. e. iter facere;*" as "*iter camerarii,*" the chalmerslaine aire, quhair of ane gud forme is written and extant in the buiks containand the auld lawes of this realme. "*Iter justitiarum,*" the justice aire, "*quia justitarius debet itinerare per regnum,*" as it is written in the English lawes; for he suld make course throw the realme for ministratioun of justice.

and ride in competent and easie number, to eschew grievance and hurting of the people. Ja. II. p. 6. c. 21.

The Justice Aire suld be halden twise in the zeir. For King David statute Justice Aire and ordained, that the justice and his deutes suld hald twa head courts zeirlie. suld be halden twise in the zeire.
 "Ass. Reg. Da. cap. statuit dominus, 18. Quoniam attach. c. statuit 77." And the Kingis Justice, the Lordes of the Regalties, and also the Kingis Bailies in his regalles, suld hald their justice aires twise in the zeir. James II. parl. 3. cap. 5. Universallie in all partes of this realme, anis on the grasse, and anis on the cornes. James II. parl. 13. cap. 94. James IV. parl. 3. c. 29. And over all the schires of the realme, in the moneths of April and October, Ja. VI. p. 11. c. 81. Baith in the Inland and alsua in the Iles, South and North, Ja. IV. parl. 6. c. 59. Because the iles and inhabitants thereof suld be ruled by the lawes of this realme, Ja. IV. p. 6. c. 79.

Justice aires suld be halden for increase of justice and tranquillitie of the realme, for stanching of combers, slaughters, riefes, thieftes, extorsiones, and oppression of the Kingis lieges; and to the effect justice may be universallie throw the haill realm ministered. For punition of the said crimes, sik authoritie suld passe with the justice throw all the realme to the justice aires, that trespassoures, sik as men-slayers, rievvers, thieves, and committers of uther enormities, in disobeying and lichtlying of the Kingis lawes, may be punished without favoures. James IV. parl. 3. cap. 29. James III. parl. 13. cap. 90. For what causes justice courts suld be halden.

The justice aire or court being proclaimed, at the Kingis command, to be halden sik ane day as he pleases, in the head burgh of the schire; the justice suld cause dittay to be taken up by his clerkes diligentlie and faithfullie. For the dittay is the principal and chief substantial point of the justice aire; and the justice suld follow the ordour thereof. Dittay, and for quhat crimes it may be taken up.

Dittay may be taken up upon all crimes pertaining to the justice and his jurisdiction, as is manifest be the actes of parliament. Read the word Dittay in the table of the saidis actes, and als upon the crime of lese majestie or treason: as the death of the King; sedition within the realme; betraying of the Kingis hoist or armie; breaking of the Kingis protection; fraudulent hiding and conceiling of ane huird or treasure; wilful fire, robbery, ravishing of weemen, murther, slauchter, thieft, forestalling, all kinde of falsed in doing of justice; in money, assise weichtes, measures, writs; and generally all uther like crimes, quhilk be the law are punished be death, or cutting of ane member, "Lib. 1. cap. 2. Leg. Malcolm. Mak. cap. 3. Ass. Reg. "Dav. c. nullus 17. de Judic. c. Placitorum, 8." Mairover, the justice-generall may set particular justice-courtes upon ony maner of crimes, quhen need is for punishment of particular faultes that occuris, sik as recent slauchter, mutilation, ravishing of weemen. Quhilk hainous and capital crimes may be first criminally persewed before him. And as for the depredations, ejectiones, spuilzies, the samine being first civilie discussed before the civil

judge ordinar, thereafter may be criminallie persewed before the justice and his deutes, at particular diettes set and appointed therefor, or be way of dittay in the justice aire. Ja. V. p. 4. c. 33.

Dittay may be taken up privatlie or publicklie.

Dittay may be taken up twa manner of waies, privatlie and publicklie; for the justice and his deutes may privlie take up dittay be privie inquisition of malefactoures, and their receipters, be the aith of three gud, honest, and faithful men, and of the principal man, sik as the chamberlaine or officiar within ilk village or town, Stat. Alex. c. 2. And mairover, all lordes and headesmen of all partes of this realme suld give up dittay upon notour trespassoures, without exception of ony persone, to be taken and justified without remission, Ja. III. p. 13. c. 94. And suld make trew relation thereanent to the chancellor or justice, quhen they sall be required, Ja. III. p. 14. c. 98. And gif they be convict be ane assise in the contrair, they sall perpetually tine their court in all time coming, " Lib. 4. c. ass. 20. stat. Wilh. c. ass. 5." Secondly, The justice suld direct publicklie the brieve of dittay to the schireffe and his deutes for taking up of dittay, quhair of the tenour followis.

The brieve of dittay.

" Wilhelmus, &c. Justitiarius Domini nostri regis generaliter constitutus,
 " Vicecomiti et Ballivis suis de E. salutem. Quia indictamente Regia, Deo
 " duce, decimo die mensis N. proxime futuri, cum continuatione dierum,
 " apud F. infra vicecomitatum vestrum levare intendimus, vobis præcipimus
 " et mandamus, quatenus summonetis, seu summoneri faciatis, legitime
 " coram testibus legalibus, de quolibet baronia, duodecim vel quindecim
 " homines, ad hoc opus magis sufficientes: Et de qualibet tenendria, seu
 " villa quatuor vel sex homines: Et de quolibet burgo, duodecim, vel sex-
 " decim burgenses, ad hoc opus magis sufficientes, secundum quantitatem loco-
 " rum, et numerum personarum, in iisdem existen. una cum seriando, fabro,
 " molendinario, brasiatore, et sectatore cujusque baroniæ, villæ, seu tenendriæ.
 " Quod compareant coram clericis nostris, pluribus aut uno, dictis die et loco,
 " cum continuatione dierum, ad sursum reddendum indictamenta regia. Et
 " faciendum ac subeundum, id quod in hac parte juris ordo requirit. Et
 " sitis vos vicecomes, et ballivi vestri, ibidem, coram clericis nostris, dictis
 " die et loco, cum continuatione dierum, haben. vobiscum summonitionis
 " vestræ testimonium, et hoc breve. Provideatis etiam pro expensis dictorum
 " clericorum, quas vobis in primis computis, de exitibus justitiariæ reddendis,
 " faciemus plenius allocari. Et hoc nullatenus omittatis sub omni pœna,
 " quæ competere poterit in hac parte. Datum sub sigillo officii nostri jus-
 " titiariæ." Quhilk brieve the schireffe suld report at the day appoynted, in
 the place quhair the dittay suld be taken up, to the justice clerke, and twa
 witnes at the least with him, for to verifie the execution of the brieve to be
 lauchfullie done, conforme to the command of the justice. Conforme to the
 precept and command abone written, the justice clerk, ane or maa, convenie
 the day, and in the place appointed, and there remainis susteined upon the
 schireffes expences (quhilk is allowed to him in his comptes of the issues and

profitis of the justice aire), and takis up dittay be the relation and deposition of the persons summoned, for the giving up thereof. Quhilk dittay they suld keep quiet, and suld na waies reveal the samin to ony person, nor translate it utherwaies than it was given to them, nor change names, ane for ane uther, nor put out ony furth of the rolles, bot lauchfullie and trewlie suld report and deliver the samin to the justice and his deutes, Ja. II. par. 6. c. 28. Dittay suld be given up be virtue of the Kingis commission, direct to Earles, Lordes, Baronnes, Knightes, and speciall landed gentlemen, and be foure of the council of everie burgh, quha sall mak and give up dittay, be their awin knowledge, or be ane sworn inquest, or sworn particular men, upon all persones suspect capable of the crimes and faultes perteining to the jurisdiction of the justice and his deutes, Ja. VI. parl. II. cap. 81. Quhilk suld be likewise keiped quiet, and reported, as said is, to the justice. And dittay being taken up upon ony crime against ony persones, neither judge, bot the justice and his deutes, may mell therewith. Like as the wardaine on the bordoures, in his wardaine court, may nocht intromit with ony thing that perteinis to the dittay of the justice aire. James II. parl. II. cap. 42.

The dittay taken up, in manner foresaid, the jnstice clerk, at command The portu- of the justice, makis ane catalogue, containing the names of the persones ous. indicted, and upon whom dittay is given up, quhilk is called ane portuous; togidder with ane uther catalogue, quhilk containis the particular dittay given and taken up upon transgressoures and malefactours, called the traistes: Baith the ane and the uther is delivered be the justice clerk to the Traistes crowner, to the effect that all the persones quhais names are contained in it may be attached and arreisted be him to compeir in the justice aire, to answer to sik crimes as sall be imput unto them. James I. p. 13. c. 139. Ja. III. p. 14. c. 99.

The crowner, in making his arreistments, suld passe to the habitation Attache- and dwelling place of the persones given to him in portuous, and thereafter mentes, make proclamation at their paroch kirkes, upon festual daies, and take arreist- sovertie of them, sik as he will stand for to the King. And gif the persones form there- swa arreisted be nocht strenzieable, the crowner sall arreist their gudes, and of. put them in sure keeping, to the Kingis use, quhill the said sovertie be founde; or else take their persones and put them in the Kingis castell, gif ony be within the schire; and gif there be na castell, he suld deliver them to the schireffe to be keiped. Ja. V. p. 3. c. 5.

And mairover, because sindrie persons indicted usis to fle and absent themselves, swa that the crowner can nocht apprehend them personallie to arreist them; in that case, it is sufficient that the crowner cum to the dwelling place of the saidis persones, and make them warning and charge to compeare in the justice aire nixt following, to answer to sik accusationes of crimes as sal be imput unto them. And thereafter, upon the next Sabbath daye following the said charge, the crowner sall make open and public

Arreisting
of fugitives.

intimation of his warning, charge, and premonition, maid to the saids persones, be their names, in their paroch kirkes. Quhilk charges, premonitiones, and intimationes, sall stand to them for sufficient arreistments, the samin being lauchfullie proven as effeiris of the law. James V. p. 4. cap. 33.

And mairover, gif he can nocht attache ony man personallie, be reason of his absence, he suld arreist all his gudes, moveable and unmoveable, to remain under sure pledges, and to be furthcummand to the King, in case he be nocht answerable to the law before the justice. Leg. Malc. Mak. cap. 1.

The crowner sall arreist at all times, alsweil before the crye of the aire as after the samin, all them quha are given to him in portuous be the justice clerke, and nane uthers. James I. parl. 13. cap. 139. Bot all arreistmentes suld be maid befor the time of the beginning of the justice aire, and seat of justice, and na-waies after the samin. James III. parl. 7. c. 58. All persones charged to compeir in the justice aire suld be attached and summoned be the auld law of this realme, upon the space of fourtie daies at the least, "Ass. Reg. Da. c. ad Summonitiones, 19." And albeit na man suld be attached or arrested, except dittay be given up upon him, "Stat. Alex. c. 2." Nevertheless, in attachementes or arreistmentes of ony person indicted, na mention suld be maid of the cause or crime for the quhilk he suld be indited, bot the same suld be conceiled be the clerke, and na waies revealed be him. "Stat. Wilh. c. statuit etiam, 6. leg. Forest. c. Si aliquis, 52. quoniam attach. c. Si aliquis, 49, Ass. reg. Da. c. 6."

Arreisting
of disobedi-
ent persons.

All the indwellers within the towne or village suld concurre and assist the crowner in attachement or arreisting ony malefactour to compeir in the justice aire to underly the law, Stat. Alex. c. 2. And siklike, quhen the crowner receivis his portuous, conteinand the name of ony person indited, quha will not obey him, or quhom he dare not, nor is it of power to arreist, he sall passe to the Lord of the Barronie quhairin that person dwellis; utherwaies, gif he dwellis not within ane barronie, he sall passe to the schireffe of the schire, and require them to be borch and sovertie to enter the said person to the justice aire: quhilk gif the barrone or schireffe refusis, the crowner sall require them to send their officiares, and sufficient number with them, to fortifie and supplie him in making of his arreistment, taking and keiping of the said disobedient person, quhill he be brocht to the schireffe, to be keiped be him until the time of the justice aire, Ja. III. p. 14. c. 99. Mairover, the crowner sall bring all persones arrested be him, quha hes not or may not find borrowes, to the schireffe of the schire, quha sal receive him in surety and firmance upon the Kingis expenses, and quhair it failzies, on their awin gudes, quhill the nixt justice aire, and there present them to the justice. Ja. III. p. 14. c. 102.

The crown-
ers expenses.

The crowner, or makers of the attachements and arreistments, suld not intromet or carie awaie ony gudes or geare pertaining to the persons at-

atched; bot the Lord or officiar of the town sall susteine them reasonable, upon the expenses of the saide person, be the space of ane day and ane night. Stat. Alex. c. 2. And gif the said person cannot be personally apprehended, the crowner may remain in his dwelling-house ane day and ane night, and suld be sustained with twa servandes, and uther twa as witnesses, and his clerke suld have twa schillings, and sa may nocht take any mair of the gudes and geare pertaining to the said person attached, albeit he be absent. Leg. Malc. Mak. c. 1.

Attachements and arreistments maid be crowners and serjandes, may be proven be them and witness, Ja. III. p. 7. c. 52. that is, be the aith of the crowner and ane witness, conforme to the auld consuetude, Ja. V. p. 4. cap. 33. Probation of arreistments.

The crowner sall have for his fee, for ilk man amerciast or componand, ane colpindach, or threttie pennies. For him that is clenged be ane assise, the crowner sall have na thing. For ane man filed or condemned, the crowner sall have all the dantoned horse not shod. Leg. Mal. Mac. v. 1. The crown-ers fee.

Quhilk is to be understand of dantoned horse, depute to wark, and not to the saddle, that was never schod nor used to schoone. Ja. III. p. 14. cap. 113. The crowner suld have all the cornes lyand in binges and mowes, casten and broken, all the insight, utensil, and domicile, within the inner part of the house, that is, within the cruik hingand upon the fire. And all and sindrie scheip within twentie, and all the swine and guits within ten. Leg. Mal. Mak. c. 1. Attachements and arreistments being maid, or directed to be maid, or in the time of the making thereof, the justice generall directis ane charge, called "*praeceptum itineris justiciariae*," to the schireffe and his deputes, in manner and form following: "*Wilhelmus Justitiarius domini regis generaliter constitutus, Vicecomiti et Ballivis suis de E. salutem. Quia ordinamus iter justiciariae domini nostri regis, Deo duce, tenen-*" Of persons quha suld compeir in the justice aire.

"*de tota ballia vestra, apud E. decimo die mensis, N. proxime futuri, cum continuatione dierum. Vobis praecipimus et mandamus, quatenus sum-*" Præceptum itineris justiciariae.
 "*moneatis; seu summoneri faciatis, legitime et coram testibus legalibus om-*
 "*nes Episcopos, Abbates, Priores, Comites, Barones, et ceteros libere tenen-*
 "*tes, totius balliae vestrae, qui sectas debent. Ac etiam omnes illos, qui*
 "*nihil nisi suas debent praesentias, qui de domino nostro rege tenent in*
 "*capite. Quod compareant coram nobis seu deputatis nostris, pluribus aut*
 "*uno, dictis die et loco, cum continuatione dierum, ad perficiendum, sub-*
 "*eundem, et determinandum, id quod in hac parte juris ordo postulat.*
 "*Praemoneatis etiam omnes indictatos, tam de novo, quam de veteri, et*
 "*suos plegios, qui nondum coram nobis comparuerunt, et judicium subierunt,*
 "*ac etiam illos qui prosequi habent, vel defendere in dicto itinere, secundum*
 "*formam juris. Quod compareant coram nobis, seu deputatis nostris, pluri-*
 "*bus aut uno, dictis die et loco, cum dicta continuatione dierum, ad perfici-*
 "*endum et subeundum id quod in hac parte juris ordo requirit. Et sitis*
 "*vos Vicecomes, et Ballivi vestri, ibidem, dictis die et loco, cum dicta conti-*
 "*nuatione dierum, habere vobiscum summonitionis, ac praemonitionis vestrae*

“testimonium, et hoc breve. Provideatis in super pro expensis nostris, bene et competenter. Quas vobis, in vestris primis computis, de exitibus justitiariae reddendis, vobis faciemus plenius allocari. Et hoc nullatenus omitatis, sub omni poena, quae competit in hac parte. Datum sub sigillo nostri officii justitiariae.”

Assessours
and Coun-
sellors.

Quhilk precept and command is conforme to the lawes of this realme: because all free-halders haldand landes in chiefe of the King, within the schireffdome quhair the justice aire is halden, suld compeir and be present, all excuse set aside, except the same be of sickness, the Kingis service, or tinsell of landes and heritage, to certifie and informe the justice and his deputes in sik question and doubtes quhilk incidentlie arisis as emergent, and of before could nocht be fore-seene nor knawn. “Ass. reg. Da. c. stat. 18. quoniam attach. c. stat. 77.” Sik as bischops, abbots, priors, earls, barones, and uther free tennents, being summoned and warned to that effect, “quoniam attach. c. ad summonitiones, 78. l. 4. c. Stat. 19. ;” and they being lauchfully warned, and not compearand, incurris the pain of the unlaw of the court, “Li. 4. c. statutum. c. 19.” and may be punished as favourers of the transgressoures, and airt and part with them. Ja. IV. p. 3. c. 29. And they and all uthers the Kingis lieges suld cum to the justice aire, and to all uther courtes, in sober and quiet maner, and suld not bring with them maa persons then are dailie in their houshold and families. And being cum to their innes and ludgeing, suld lay their armour and weapons from them, and use na weapons bot their knife. Ja. II. p. 12. c. 83. Mairover all Lordes spirituall and temporall, barrones and uthers, cummand to the justice aire, suld nawaies maintein, fortifie, supplie, defend, nor be advocates, nor stand at the bar with manifest traitoures, men-slayers, thieves, reivers, nor uther trespassoures, nor persons perteining to themselves or utheris; saisand, it sal be leasum to them, in sober waies, to stand with their kin and friendes in defence of them, in their honest actiones. Ja. III. p. 14. c. 98. Quhen the justice aire is to be halden upon the bordoures, the wardaines within their wairdainries, and their deputes, with the freehalders of the schireffdome, being warned thereto be the schireffe, be open proclamation, suld convoy the justice and his deputes to the place appointed for halding of the court; and accompanie them induring their residence, and untill they be out of the boundes of their schireffdome, and received be the nixt schireffe. Ja. VI. p. 11. c. 81.

Persones
attached.

In the justice aire suld compeir all persones attached and arreisted, conforme to the dittay given and taken up upon them; quhair of some were arreisted of before, to have compeired in the justice courte preceding, already ended and expired, and compeired nocht in the samin, quhais names are given to the crowner, to be of new attached and arreisted to the aire following as of before; uthers are of new indited, upon quhom nae poynt of ditay was taken up in ony time bygane, quhais names are comprehended in ane catalogue called portuous. All the foresaidis persones indited

baith of auld and of new, suld be attached and arreisted be the crowner, to compeir and underly the law, the time of the justice aire, as is manifest be the precept foresaide, direct be the justice generall to the schireffe.

All persones arreisted, that may be apprehended, the time of the aire, in the tolbuith, or in the town quhair the justice is, sal be taken and delivered to the justice, to be justified for their crimes and trespasses; swa that the arreistment be maid before the time of the beginning of the justice aire and seat of justice. Ja. III. par. 7. cap. 57. And quhair landes lyand in sindrie schireffdomes are annexed and united in ane barronie, the inhabitantes thereof sall answer in the justice courte quhair the landes lyis; and the lorde, or proprietor of the landes annexed, givis presence or service in the courte of the schireffdome within the quhilk the barronie lyis to the quhilk the landes are annexed. Ja. IV. par. 6. c. 93. For in this case, respect and consideration is had to the naturall situation of the landes, and to the jurisdiction within the quhilk they lye, rather nor to the imaginar and civill forme of lying of the landes be annexation.

Attour, all inhabitants of stewardries and bailleries sall cum to the head burgh of the schireffdomes quhairin they lye, and within the quhilk head burgh the Kingis justice aires are halden. Ja. VI. par. 11. c. 81. Stewardries and bailleries.

The judge in the Kingis justice aire is the Kingis justice generall, or the Kingis baillie in his regalles, havand lauchful power and commission granted to them. Ja. II. p. 3. c. 9. For the King, or the justice generall, may mak aucht deputes, quha, with ane depute of the thesaurer, and ane uther of the justice clerke, suld passe severallie throw the aucht quarters of the realme, and hald justice courtes. Ja. VI. p. 11. c. 81. The judge.

The justice generall suld have for his sustentation, ilke day of the aire, five pound. Likeas the justice clerke suld receive for ilk man clenged be ane assise, and drawen furth of the rolles, four pennies. And for ilk man amerciati, or componand "ij. s. Leg. Mal. Mak. c. 2." For ilk actorney and commission, twa shillings. For ilk man quha producis ane remission, twa shillings. For ilk man that cummis in the justice will, twa shillings. For ilk man convict and fled, twa shillings. For ilk letter of witnesse, sex shillings aucht pennies. The justices expences.

The schireffe suld be present, as he quha is warned be the justice precept to answer to all the poyntes thereof; and touching the execution of his office, togidder with the crowner, quha suld answer for his attachments and arreistments, and verification thereof: And the schireffe, with the crowner, suld thoill an assise the last day of the aire, anent the using and execution of their offices, to quhome justice suld be ministrat, as they sall be found innocent or culpable. Ja. III. parl. 14. cap. 103. The schireff. The crown-er.

The day of compeirance being cum, to the quhilk the justice aire is cryed and proclaimed, the justice and his deputes suld compeir, with all uther persones charged and commanded to concurre and assist with them. At the

The suite of quhilk time, the sutes suld be first called with their Lordes. For albeit the courte.

suiters compeir, neverthelesse, their Lordes and maisters ar oblised likewise to compeir, and give presence to the justice in his aire, they being lauchfully summoned and charged to that effect, be open proclamation, and be the justice precept abone written.

Commis-
sion.

2. The commission and power given to the justice suld be produced and red: And gif the commission be given and granted to maa persones nor ane conjunctly, they suld be all present; utherwaies it is na lauchfull courte. Bot gif they be constitute conjunctly and severallie, it is sufficient that ony ane of them be present. And mair over, the justice may nocht make and constitute deputes and substitutes under him, except he have speciall power in his commission to do the samin. "Lib. 4. c. si unus. 27." Thirdly, The judge suld

The fensing
of courte.

begin and fense the courte, conforme to the common ordour and consuetude used and observed. Ja. VI. par. 11. c. 81. Quhilk suld be done at eleven houres before noone. Ja. VI. p. 11. c. 86. Fourthlie, The court beand af-

The demp-
ster.
The sutes.

firmed, the dempster suld be called and caused to be sworne, that he sall leallie and trewlie use and exerce his office. Fiftlie, The suites suld be called. Ja. VI. p. 11. c. 81. Zit againe, as of before, ilk man, twise with their lords and masters, and the absents decerned to have failzied, and therefore suld be unlawed; and gif baith the suiter and his master be absent, ilk ane of them be themselves suld be amerciati.

The assise.

Sextlie, The assisouris being summoned be ane precept direct be the justice to that effect, suld be called, ilk persone under the paine of fourtie punds, and the justice may cheise assise ane or maa as he pleases, of the best and maist worthie of the cuntrie, before quhom the haill accusation, reasoning, writtes, witnesses, and uther probation, and instruction on quhatsumever of the crime, eal be reasoned and deduced in their presence; and also in the presence of the parties accused in face of judgement. Ja. VI. p. 11. c. 90. 91. And it is to wit, that he quha givis up dittay upon ane uther suld not passe upon his assise. Ja. 1. p. 3. c. 50.

The persons
attached.

7. The justice suld proceede in his court, and put the offenders, gif ony be alreadie in prison, to the knowledge of ane assise; and minister justice upon them, as they sal be found innocent or culpable. Ja. VI. p. 11. cap. 81.

Pledges for
entres of
uthers.

8. He sall call thereafter the pledges and cautioners of persones attached, quha faund sovertie before the justice ony time preceeding, at ony particular diet or court, to compeir the third day of the aire, or sooner, upon fiftene daies warning. Ja. VI. p. 11. c. 81.

9. This being done, the clerke sall visit and consider the haill rolles and journal, and call all them quha are absent from the aires preceeding, upon quhais heades and names is written, "prima dies, secunda dies, tertia dies;" be the quhilk he understandis fra quhat aire or court they were absent, and that they may be therefor amerciati, ilk ane of them be themselfe, be reason of their absence. And gif the saidis persones, nocht compeirand of before,

now compeiris, and are present, the clerk sall luik the auld dittaies and rolles, and accuse them conforme thereto, in the best manner he may gudlie. And gif there be na particular poynt of dittay or accusation, he sall lay commoun dittay to their charge.

10. Thereafter the justice sall call the persones newlie indited and arreisted; and gif they or onie uther of the arreisted persones foresaidis compeir, they suld be presented to the courte, and to the schireffs, quha suld answer for them untill justice be done upon them.

11. They quha are attached and compeiris not, may nawaies be accused for their nocht compeirance, bot be the Kingis service; quhilk suld be verified be the Kingis letter produced in court, or be reason of seiknesse; quhilk be the auld law was tryed be an assise, quhidder it was trew or feinzied, albeit the partie was absent. Stat. 2. Rob. Br. c. 5. But now it suld be proven and verified be the minister of the paroch within the quhilk the person excused dwellis, and be twa witness personally compeirand in judgement. Ja. I. p. 9. c. 114. And concerning persones absent, it is generally ordained, that everie barrone and freeholder sall answer in the justice aire for his awin men, dwelland upon his awin proper landes, tackes, steadinges, rowmes, and barronies, and sal be halden to enter them, or els answer to the King for their unlawes. Ja. V. p. 3. c. 6. Quhat is the unlaw in the justice aire, vide "Amerciamentum." Bot for the better understanding of the lawes concerning fugitives and absentes, it is to wit: That be the auld lawes of this realme, gif the partie defender being lauchfullie warned compeired not, but sent an essoinzie or excuse, the samin being reasonable, was received and admitted to the judge three sindrie daies or courtes; and gife he compeired afterwarde, and verified not his essoinzies to be lauchfull, he was distrenzied, and poynded therefore. But gif he neither came nor send an excuse, the partie persewer compeared at lauchfull day and time of court, and offered him reddie to persew, quhilk he did be the space of three daies. And the third court beand bypast, the defender was summoned to compeir the fourth day; the quhilk fourth court was peremptour; because sentence definitive was given against him, conforme to the claim and petition, gif he compeired nocht. "Lib. 1. c. summonitus, 9." The like forme and ordour of processe was observed in justice courtes. For mention is maide of the first aire, Ja. III. p. 13. c. 94. And of the second aire, Ja. V. p. 4. c. 32. And of the fourth courte, Ja. III. p. 14. c. 101. And gif ony person indited and lauchfully attached, compeired not the said three courtes, his pledge or law borgh was called and amerclat for the first, second, and third court, and at ilk time after ilk ane of the saidis courtes the said pledge was poynded and distreinzie, and the distresse or poynd was letten to borgh, and maid free under caution, that the said person indited suld compeir in the next aire following to underly the law. And gif he was absent at the fourth court, the peremptour doome was given against him, that sik ane man was in ane amerclament, and at the Kingis horpe, and his landes

Excuse for
non com-
peirance.

Of persons
absent or
fugitive.

The fourth
court.

and all his gudes escheit to the King, except he come within fourtie daies, and did bide the law: And, thereafter, the court being ended, the said person was denounced rebell, and put to the horne openlie at the mercat croce of the head burgh of the schire. Quhilk forme of processe was sa lang and prolix, that in mony zeires parties hurt and grieved gat na justice; and trespassoures and crimes passed unpunished; quhilk was the occasion to mony persones to commit crimes, trusting na hastie punition nor correction to follow. Therefore King James the Fifth statute and ordained, that the process of justice aire and justice courtes suld be peremptour at the second aire or court, swa that fugitives not compeirand at the second aire or court suld be denounced the Kingis rebelles, and put to his horne, and all their gudes his escheit. Ja. V. parl. 4. cap. 32.

Replegia-
tion be
reason of
regalitie.

12. Hereafter the lordes of regalitie may desire their men to be remitted to their awin justice courte, and repledge them, schawand their commissiones, power, and payand therefore; and leivand ane caution behind them, called Culrach, quha sal be acted and oblised in the justice court that justice sal be done and ministrat in the court of the regalitie, to the partie compleinand upon the person repledged.

Replegia-
tion of
burrowes.

13. The justice or his clerkes sall demand and spear at the baillies of burrowes gif they be reddie to present ilk burges within their burgh indited to the Kingis justice aire: Quhilk persons suld all enter personallie before the justice, under the paine of an unlaw and amerciament of court; quhais names the saidis baillies sall put in writ, and deliver the samin to the justice or his clerkes. And gif they will borrow or replege their saidis nichtboures, they sall schaw their commission, and pay therefore; and thereafter they sall draw or oblige themselves, their commission, and burgh in pledge, that thay persones quhom they replege, and quhais names they give in write, sal be furthcummand and answerable to the laws, and challenge of the justice. At the quhilk time, he and his deputes sall assigne to them ane certaine day to underlie the law, either in that aire, or thereafter quhen he sall think speedfull; And at the samin time, it is leasum to the Kingis justice, sittand in the principall burgh of the royaltie, to give ane assise to all the saidis burgesses, repledged of their awin nichtboures that best knawis the veritie, dwelland in the same burgh with them. And gif there be nocht ane sufficient number of the said con-burgesses, it sal be leifull to choose an assise of the burgesses of the said head burgh, quhair the justice and his deputes sittis, as he sall think expedient. Ja. IV. p. 1. c. 1.

Remissions
or respettes.

14. Gif the partie accused compeirand, alleagis to his remission or respet, he sall produce the samin in court, and sall finde sicker borrowes to assith and content the partie compleinand, within fourtie daies following; quhairupon ane act is maid in court, quhairby he and his cautioner are oblised to assith and satisfie the partie within the space foresaid; quhilk is called the acte of adjournall. And gif he refusis to finde caution, he sall remain in the Kingis prison, quhill the said fourtie daies be runne, and then his remission

Act of ad-
journal.

sal be expired and of na value. Ja. II. p. 14. c. 75. And in this case, quhen ony man takis him to his remission, respet, or composition, in the justice aire, or justice court, and findes sovertie to assith the partie, it is leasum to the partie to call the said sovertie before the Lordes of Councell, conforme to the acte of adjournall maid thereanent. Ja. V. p. 3. c. 7. As gif onie man becummis sovertie for ane uther, anent spulzie committed be him, and for restitution or satisfaction to be maid by him therefore, he, as sovertie, may be called and conveyened for the gudes spulzied, for the violent prices thereof, for the damage, skaith, and interest susteined be the persewer, throw the committing of the said spulzie. "10. Martij. 1500. William Keith contrair the Earle of Caithnesse." And the said sovertie being condemned, hes gud action against the principall partie for his reliefe, be ane simple charge, upon sex daies warning, without peremptour sumoundes or ordour of table, 11. Julij. 1543.

15. Gif the person attached compeires in the court, and beand accused, hes na relevant exception, or reasonable defense, of necessitie he suld passe to the knowledge of ane assise, conforme to the lawes of the realme. At the quhilk time the haill assisours suld be called, and the absentis amerciat. Ja. VI. p. 11. c. 76. And the partie accused suld be heard to propone all and sindrie his lauchfull defences against the haill assisoures, or ony of them, to repell them as he may best of the law, and stay them to passe upon his assise. At this time the person compeirand and accused cummis in the will of the justice, or he is clenged be ane assise; or he is filed and convict. Gif he submittes himselfe, and cummis in will, it is leasum to the justice to draw him furth of the rolles, and to declare his will, and to charge him to pay ane composition, or sik ane sum of silver as he pleasis to modifie, after the qualitie of the crime and person; for uptaking and inbringing quhairof, the justice aire being ended, the justice directis his precept, called "Praeceptum extractus itineris justitiariae," in this forme:—

"Wilhelmus Justitiarius Generalis, Vicecomiti et Ballivis suis de E. salu-
tem. Quia in itinere justitiariae Domini nostri regis, per nos ultimo tent.
apud F. decimo die mensis. N. Anno Domini, &c. Diversi fuerunt amer-
ciati, et pro suis delictis convicti, et in nostra voluntate positi. Quare
vobis praecipimus et mandamus, quatenus de infra scriptis personis sub-
scriptas summas levare faciatis, et pro eisdem secundum formam juris di-
stringatis. Et primo de N. summam, &c. De quibusquidem summis
solvatis pro expensis nostris in dicto itinere summam. N. Residuum vero
dictarum summarum solvatis cofferariis Domini Nostri Regis: Vel cui
vobis assignabitur infra tempus legitimum, hoc est infra quadraginta dies
primum diem dicti itineris proxime et immediate sequen. Et hoc nullo modo
omittatis."

Quhen ony person is clenged be ane assise, the justice directis his testimo-
niall, called "Litera testimonialis de homine mandato per assisam," in manner
following:—

Persones
cummand
in will.

The precept
of extractes.

Persones
charged.

" *Wilhelmus Justitiarius Generalis, universis et singulis ad quorum notitias*
præsentes literæ pervenerint, salut. Noveritis quod comparens coram nobis
itinere justitiariæ Domini nostri Regis, tent. apud. F. decimo die mensis. N.
anno Domini, &c. I. de B. indictatus, et per rotulos Regios calumniatus
de arte et parte talis furti, vel talis rapinæ, vel incendij, &c. Quamquidem
calumniam dictus. I. in facie judicij penitus denegavit. Et super hoc ad
recognitionem assisæ utique se submitit. Quæquidem assisa hinc inde
diligenter consulta, et plenius avisata dictum. I. a dictis calumniis sibi im-
positis, quittum declaravit, penitus et immunem. Et hoc omnibus quorum
interest, vel interesse poterit, notum facimus per præsentes. In cujus rei
testimonium sigillum officij nostri appendi curavimus."

All thay persons quha cummis in will and drawn furth of the rolles, and also they quha are clenged be ane assise, can na waies in ony time thereafter be called or accused for that crime for the quhilk they cum in will; for anis quit and clenged, ay quit and clenged. Zit nevertheles, gif ony person be accused criminallie of life and lim, at the instance of ane uther private man allanerlie, and is clenged and maid quite; the Kingis justice and his deputes, be reason of their office, may thereafter tak inquisition anent the said crime, and in the Kingis name accuse the committer thereof, conforme to the law; notwithstanding that of before he was clenged thereof be ane assise. "Lib. 4. c. Si querela, 58." Because the action or persute of ane privy partie prejudgis not the King in his richt or rentes competent to him, be reason of his royal power. And therefor the thesaurar, and the Kingis advocate, may persew all malefactoures; albeit the parties desist, or privatlie agree amangst themselves. Ja. VI. par. 11. c. 76.

Persones
fled and
convict.

Quhen trespassours and malefactoures ar convict as breakers of the statutes and acts containd dittay, they aucht and suld be punished according to justice, and conforme to the tenour and paines contained in the actes broken and contraveened be them. Ja. IV. p. 4. c. 45. And sa gif the paine contained in the acte be pecunial, they suld pay the samin. And gif it be capital, they suld underly and suffer the samin, except the King give them remission and speciall grace thereanent. As for example, landed men lauchfullie and ordourlie convict of common theft, recept of theft, stouth, or rief, incurris the paine of treason, and therefore suld be punished be tinsell of life, and confiscation of landes and gudes. Ja. VI. p. 11. c. 50. Alwaies the crowner may not intramet with ony gudes or geare pertaining to ony trespassour, convict and condemned to the death, at his awin hand, until the schireffe or his deputes passe, or send with him, and visie all the haill gudes, and deliver to the crown sa-meikle as he sulde have be reason, and as perteinis to his office, and bring the remanent to our Sovereine Lord and his thesaurer. Ja. III. par. 14. c. 102.

The ende
of the aire.

The justice aire beand ended, the justice sall deliver the extract thereof, subscribed be him, to the thesaurer, quha sall cause take up the soumes contained thereintill, and make compt thereof in the nixt Checker; in the quhilk

compt sal be allowed the expenses and charges of the justice, and his deputes and clerkes, as the samin sal be modified be the Lordes Auditoures of the Checker. Ja. VI. p. 11, c. 81.

L

LAST of Gudes, how meikle it conteinis.—Vid. Serplaith.

LET Lands to borgh, "dimittere terras ad pleg. Vid. plegius. Vide "Recog."

LEX Apparens, "Lib. 4. cap. 4. de Judic. c. 24. Leg. Forest. cap. Item "in placito. 16." signifies the law concerning singular battell. And, Lib. 4. "cap. 1, it signifies an inquisition maid, or taken be ane inquest or assise. And in the law of Normandie, Lib. 9. c. 10. it is called "Loy apparissant." Loy appa- And Lib. 8. c. 3. All quarrelies of possessiones or moveables, quhilkis are risant. called Chattel, or of landes and immoveable gudes, suld be decided be com- moun and simple quarrelles, conforme to ordoure of lawe, or be lawes "Ap- "parisantes;" quhilkis are determinat ather be singular battell, or be ane inquest of the cuntrie, uthersais called "Loy recognoissant." It is likewais called "Lex paribilis, a parium pugna, vel concertatione," from the combat Lex pari- of Peeres and Championis; or "Lex duellonum," quhilk law is ungodlie, and bilis, not to be used among Christianes. "Cuia. lib. 1. de feud."

LIBERATIO, ane fee given to ane servand or officiar, quhilk is called ane liverie. Leg. Malcolm. Mackenneth. c. 4." Feodum, or fee, is com- monlie of silver and money, and ane liverie is of meate or cleithes. Bot this distinction or difference is nocht perpetuall.

LIBERUM Tenementum is commonlie and properlie called franck tene- ment or liferent: In Latine "usus fructus," conforme to the dailie pratique of this realme. And, nevertheless, "Liberum tenementum" signifies the propertie, fee, or heritage, "Donatio liberi tenementi, et concessio hære- "ditatis," is baith ane. "Lib. 2. c. potest. 21." "Tenementum Regium" is called the Kingis heretage. "Lib. 2. c. Dicitur. 74." In the quhilk signification, "Minor dicitur esse in tenemento, lib. 3. c. Generalia. 24. c. "Remanere, 26. Et placitum de recto et liberis tenementis per breve "domini Regis de recto debet terminari, Lib. 1. c. 6." And King Alexander gave and dispo ned to Duncan Forbeys "tenementum de Forbeys; that is the landes and heretage of Forbeys; quhilk charter is zit extant.—Vid. Tenementum.

Alodium.

LIGANTIA, Lib. 2. c. Fieri. 61. From the Italian word "Liga," was league, band, or obligation; as "homo ligius," ane man who is oblised and bound, fra the quhilk cummis "Alodium, in libris feudorum, quasi possessio sine Leoda: Cuius possessor nemini est leodes sive ligius." And "Ligeantia is the mutuall band or obligation betuixt the maister and the servand," "Lib. 2. c. plurib. 14. lib. 4. c. Si quis super. 36. Vid. Assidatio." Item, the mutuall band and obligation betwixt the King and his subjects, quhairby we are called his lieges, because we are bound and oblised to obey and serve him. And he is called our liege King, because he suld maintaine and defend us. And the doctors of the law writis, "Quod imperator dicitur dominus totius mundi, eodem modo quo rex regni. l. bene a Zenone. C. de quadr. præscrip." Quhilk suld be understand concerning the defence and maintenance, and not anent the propertie. "Quia reges non sunt domini

Homagium ligium.

"privatarum possessionum, Glos. in L. Barbarius de Offic. prætor." "Homagium ligium, vel cum ligeantia factum," is quhen the vassall absolutely makis homage to his superiour against all and quhatsumever persones, without exception of onie man, quhilk suld be done to na uther bot to the King

Non ligium.

allanerlie. "Homagium non ligium, vel sine ligeantia," is that quhilk the vassal makis to his over-lord, excepting and reserving the fidelitie quhilk he aucht to the King, or his elder over-lord or maister. "Lib. 2. c. fieri. 61. Chassanzus. in Consuetud. Burgund. Rubric. 3. § 3. Verb. et homage Nu. 10. cum. seqq." Quhilk vassall is called "vassallus non homologus." Likeas the uther is "vassallus homologus," in quhais aith na person is excepted. "Cuia. lib. 2. de feud."

M

MACHAMIUM, Mechamium, from the auld French worde "Mehaigue," quhilk we call manzie, hurt, mutilation, demembration, or the lossee or tinsell of onie member of ane mannis bodie; or the breaking of ane bane; or quhen ane mannis harn-pan, or ony part thereof, is cutted away, or dung in. "Lib. 4. c. 4. Res cum mahamio dicitur res minus sana, Lib. 3. c. ex causa, 8." Be the auld law of this realme, he quha is mainzied hes ane just cause to excuse himselfe fra singular bautell, and zit he will be compelled to purge, clenge, and defend himselfe. "Per ignem et aquam. lib. 4. c. 4. Si quis pro latrocinio 15. Quoniam. attach. c. Si quis. 58. Lib. 4. c. assisa 20. Stat. Alex. c. quecunque 31." Quhair of the power perteinis not to ony baronke; for na subject may compell ane uther to purge himselfe be fire or water, "Stat. Alex. c. prætere, 32." This kinde of purgation was ane maist scharp and extream kind of purgation and trial: likeas we dailie use in common proverbe, quhen we say, be way of menacing and boasting, that we sall gar

ony person passe "per ignem et aquam:" that is, to suffer and underly that kind of tryall that is maist severe and extreame. It is called "judicium Dei," ^{Judicium Dei.} the judgment of God, as knawin to him allanerly, "Iter. Camer. c. cum 'hoc. 25." And was in great use among the Longobardes, as is expounded be "Hotomannus de feud. c. 44." In the auld Saxon tounge, and zit in Dutch, it is called "ordeil, ordalium," from "or," quhilk they use as "privativa par- ^{Ordalium,} " ticola," and "del," quhilk signifies ane part or portion; quhilk word we use in the same signification; and swa "ordeil" signifies innocent, quha hes na part, or is not participant of the crime quhairof he is accused. Purgation be the fire, is quhen ony man with bair feet passes throw the fire, without ony harm or hurt, or quhen ony man dois carry and bear in his hand hot burnand iron, without ony hurt of his hand, quhilk is called "ferri candentis ^{Purgatio per} "judicium." In the quhilk case, he was decerned to be ordeil, or nawaies ^{ignem.} participant of the crime. Utherwaies, gif his fute or hand was hurt be the fire or hoate iron, he was condemned as participant and fowle of the crime. And siklike, "Purgatio per aquam," is quhen ony man suspect or accused of ^{Purgatio per} ane crime was casten in hoate or cauld water; and gif he passed to the bot- ^{aquam.} tome without ony hurt of his bodie, he was decerned ordeil and innocent; bot gif he did not fall to the ground, but did swimme abone, he was condemned as fowle of the crime; as is written in the auld lawes of the Britones. "Verb. "Ordalium." And be "Cuiac. lib. 2. de feud." "Purgatio vulgaris" is dis- ^{Purgatio} charged be the Canone law, "c. dilecti. 2. extr. de purgatione vulgari, c. ex ^{vulgaris.} tuarum. 8. depurgat. canonica." And likewaies be the lawes of this realme it is forbidden as unleasum. "Ass. Reg. Da. c. Stat. etiam, 30. In fine ubi "pro fossam, lege aquam. Stat. Alex. c. Statuit Dominus, 6." And be the law of God it is commanded, that nane suld suffer their sonne or dauchter to go throw the fire. Deut. 18. 10.

MANELETA, Ane kinde of evil and pestilent herbe, quhilk growes amangst the cornes, called "Guld, de judic. c. 7:" The law of "maneleta," or of guld, was first institute be King Kenneth, quha ordained that he quha throw his fault or negligence suffers sawen lands to be filled with noy-sum herbes, for the first fault sall pay ane ox, for the second fault ten oxen; and for the third fault sall be remooved fra the possession and laboring of the land. "Hector Boetius, Lib. 10." And gif ane mailer, or tenant, filis the land with guld, and will not clenge the samin, he may be punished as ane seducer, quha bringis or convoyis ane armie within his maisters land, to wrack and destroy it. "Leg. Forest. ca. si nativis 28. de judic. "c. 6." And gif thy awin native man or bondman (nativus tuus) hes guld within thy land, for ilk stock or plant he suld pay ane mutton, as ane unlawful, "Leg. Forest. d. c. 28. de Judic. c. 27." The quhilk lawe and constitution is keiped and observed within certaine partes of this realme, quhere the tennent sufferand the guld to grow amangst his corns, payis ane wedder or scheipe to his maister.

MANERIUM, Landes laboured with hand warke, “quasi manurium, & Terræ domi-“ manu,” ane mainnes or domaine landes, or “terræ dominicales,” because nicales. they are laboured and inhabited be the Lord and proprietor of the samin. Gif there be twa mainnes perteing to ony man that is deceased, the principal mainnes suld not be divided, bot suld remain with his aire and successour, without division, together with the principal messuage. And full satisfaction suld be maid to his wife or relict therefore, furth of the second mainnes, or uthewise. “Lib. 2. cap. Dos autem, 19. de Judic. cap. “112.”

MANSUS, “A manendo,” ane habitation or dwelling place, speciallie quhair husbandmen labourers of the ground dwellis a-landward, to the effect they may labour their land mair commodiouslie. “L. Si plures, Nu. 9. C. “de condit. insertis. Molinæus in Still. cur. part. 3. c. 85.” Bot “Bartol. in “1. Si ita, Nu. 19. de aur. et argent. legat.” affirmis ane manse to be als meikle lande as may be gudlie tilled be twa oxen in the zeir. “Cuiac. lib. “1. de feud.” writtis that “mansus” is sa-meikle lande quhairby ane man may susteine honestlie himselfe and his familie, and pay the dewtie to his maister, quhilk is called “Hæredium.” Bot in the practique of this realme, it is rather called “Gleba;” that is, ane certaine portione of arable lande. In Latin “Terra culta,” or “terra veluti nativi venditi cum gleba, h. e. terra. “Qui nativi ascriptitij vocantur, Lib. 2. c. Pluribus, 14.” And the four aickers of land quhilk is granted to the ministers of the Evangell within this land, is called ane gleebe, the quhilk suld be free fra payment of ony teindes. Ja. VI. p. 5. c. 62. And Carolus Magnus, to the effect that the ministers of the word of God suld not perish be hunger or povertie, gave to ilk kirk ane manse; for the quhilk they suld paye na dewtie or service.— “Cuiac. Lib. 1. de Feud.”

Hæredium.
Gleba.

MANUS Mortua, “dimittere terras ad manuum mortuam, hoc est, ad multitudinem sive universitatem, quae nunquam moritur.” Quhilk uthewise is called “Mortificare terras;” that is, to give and dispoone landes to the hand or power of the kirk, college communitie, or ony universitie, capable to possesse, bruik, or joyis gudes or landes; the quhilk is said “per Antiphrasin, seu à contrario sensu,” because sik kirks, colleges, communities or universities, dois nocht die, albeit the particuar members thereof are mortall, alters, and deceasis. “Ius Normand. Lib. 5. c. 7.” Quhilk is conforme to “L. Proponebatur, 76. ff. de judiciis.” Swa “manus” may signifie power, as in the Latin tounge; or “manus mortua” may be conforme to the Scottish word, borrowed fra the Dutch word “Meinzie,” quhilk signifies ane multitude, and speciallie of folke and people: And swa “dimittere terras ad “manum mortuam,” is to give landes to ony universitie and multitude of people: Alwaies it is not leasum to ony man to mortifie ony part of his lands to the kirk without consent of the King. “Lib. 2. c. Notandum, 26.”

Meinzie.

Because the King may be thereby prejudged in his tennendrie, dewtie, and service, frae the quhilk the kirk-men in auld time were exeemed.

MARK, "In tractu de ponderibus et mensuris," signifies ane ounce weicht, or halfe ane pound, quhairof the dram is the aucht part. Like as the ounce is the aucht part of ane mark, "Chessa. in Consuetud. Burgund. Rubric. 1. § 7. Verb. 65. solz. Turnoys, solidus (Inquit) in jure capitur pro aureo, quorum 72. faciunt libram auri. Et duodecim vnciae faciunt libram, et octo vnciae marcam Gl, et la. Fabr. in § nos autem. verb. solidos. instit. de attil. tutor." Dram.
Solidus.
Libra.

MARCHETA. King Evenus did wickedlie ordaine, that the lord or maister of the ground or land suld have the first nicht of ilk married woman within the samin. The quhilk ordinance was after abrogate be King Malcolme the Third, quha ordained that the bridegroom suld have the use of his awin wife; and, therefore, suld pay ane peece of money, called Marca, "Hector Boetius, lib. 3. c. 12." For the quhilk certaine kye was used to be payed, "Lib. 4. cap. Sciendum, 63." Bot utherwaies, in my opinion, Mark, or March, signifieth ane horse, in the auld French, Irish, and Dutch toungues: For in the French toung, "Marcher" is to ride or gang, as "Marcher devant," to ride or gang before. And "Paulus Diaconus, Histor. Longobard," writtis, that "mar" is called in Latin "equa," quhilk we call ane meare. "Alciatus de singulari certamine, c. 32. Marcam (inquit) Germani equam dicunt, unde Marcommani (qui hodie dicuntur Moravi) equitatu pollentes populi. Et Maroboduus Rex Marcomannerum, cui corpus instar equi erat." Mairover, I find ane auld constitution, written be Lotharius Imperator and Carolus Rex, in this manner; "Vt missi nostri, in illorum missatijs (h. e. commissarij nostri in iis locis ad quos mittuntur) curam habeant, ne homines nostri, aut alij quilibet, vicinos suos majores, vel minores, tempore æstatis, quando ad herbam suos caballos mittunt; vel tempore Hyemis, quando Marescalli illos ad fodrum dirigunt deprædentur, aut opprimat." Be the quhilk it is manifest that "fodrum" is a Dutch word, "pro pabulo equorum," quhilk we call fodder, and "marchallus," or "mariscallus," is a maister of stable, or a servand that has cure of the horse, for "march" signifies an horse, and schalk" in Dutch is ane servand, as "Godschalk," the servand of God. And Alciatus, d. c. 32. affirmis that the troupes of horsemen in the armie of Brennus was called "Trimarchisia," because ilk man had three horse. And in the samin signification we use the word horse marschel, quhair horse is adjoyned for interpretation of the word marche. As likewais in Silverdown hill, this word hill is the interpretation of the other word downe, quhairof the ane and the uther signifies ane thing, in Latin, "mons." Swa horse-marschal is ane servand that keepis or curis horse, as is commonlie used within this realme; quhilk opinion sindrie Germane writters confirmes, and specielle the "Scholiastes of Guntherus, lib. Mar.
Fodrum.
Marchallus.
Marche.
Shalk. Tri-
marchisia.
Hors-mars-
chal. down

" 8. Austriados." Swa leavand to ilk man his awin oppinion and judgement free to himself, I think that " Marcheta mulieris" is the raide of the woman, or the first carnall copulation or conjunction with her, quhilk, in respect of her virginitie, is maist esteemed be men. Quhilk interpretation is confirmed als wa be " Cuiac. Lib. 1. de feudis."

Maritagium legale.

The marriage perteinis to the King.

Maritagium conventionale.

Single and double availe of marriage.

MARITAGIUM Hæredis, the marriage of ane aire maill or femaill, quhilk is modified and liquidat be the Lordes of the Session to ane certaine summe of money, after consideration of the rental and valure of the landes perteing to the aire, which is either legall or conventional. The marriage legall, is that quhilk be disposition of the law perteinis to the superiour and over-lord. For the mariage of an aire maill or femaill of landes halden be service of warde and relieve, being within lesse age, or being of perfite age, and not married the time of the decease of his father, or uther predecessour to quhom he is aire, perteinis to his immediate superiour, be the common disposition of the law of this realme. And gif there be maa superiours, the marriage perteinis to the first and eldest superiour, to quhom the predecessours of the said aire maid first legeance and homage; or of quhom they have the first infestment of their landes. " Leg. Forest. c. si alicui, 75." Mairover, gif an aire halds certain landes be service of ward of the King immediatlie, and certaine uther landes be the like manner of haldine immediatlie of ane uther superiour, spiritual or temporal, the marriage of the aire suld perteine to the King allanerlie, without ony respect of the quantitie of the landes, or of the prioritie or posterioritie of the halding; because the King hes not ane peere or companion, far less ane superiour, within his realme. " Lib. 2. c. restituere, 44. c. 45." " Maritagium conventionale," is that quhilk cummis not be disposition of the law, bot be the convention and consent of the parties; as quhen onie man hadis his landes in blench or in few ferme, his awin or his aires marriage nawaies thereby perteinis to his superiour; bot zit gif hee payis ony dewtie for his landes, " nomine albæ firmæ," or " nomine feudi-firmæ, vna cum maritagio hæredis cum contigerit;" gif he happenis to decease, the mariage of his aire, nocht being married, perteinis to his superiour, not be the nature of the halding of his landes, bot be the convention and provision contained in his infestment. The availe of ane aires mariage is either single or double; for gif the superiour requires not ane aire to marie, and the aire marie without his consent, the superiour suld obtaine allanerlie for his marriage, be the estimation of the ordinar judge, sameikle as may be ane competent summe or tocher to the said aire, conforme to his zeirlye rent; or gif the aire refusis to marie, hee cannot be compelled to do the samin, " quia matrimonia debet esse libera." Bot quhen he cummis to perfite age, he sall give to his superiour als meikle as he micht have fra ony uther person for the samin marriage, before he receives his landes out of the hands of his superiour, " quia maritagium eius qui infra ætatem est, de mero jure pertinet ad dominum feudi, Leg. Forest,

"c. Si quis, 66." The double availe of the marriage of ane aire perteinis to the superiour, quha makis ane lauchfull offer of ane partie to the aire in mariage, providing that the partie offered be of equal partage. For gif the superiour dois marie the aire with ony person in disparage, as with ane burgesse man, or with ane villaine, gif the aire be of the age of fourteene zeires or maire, and givis his consent to the said mariage, the samin is gude and vailable of the law. Bot gif the aire be within the age of fourteene zeires, quhair-throw he may nocht give ane lauchfull consent to his mariage, in that case, gif his kinsman compleinis, the over-lord sall tine and omit the warde, and all commoditie that he may have thereby, until the aire be of lauchfull age of twentie-ane zeires, quhilk sal be converted and employed, be the sight of his friends, to his use and commoditie be rasone of the schame and dishonour done to him, "Leg. Forest. c. Si qui domini, 65."

Quhilk is conforme to the lawes of England, "Hen. III. stat. Merton, c. 6.

"c. 7." Swa gif the mariage of ony aire or heretrix be fallen in the superiours handes, and the heir beand lauchfullie required be the superiour or his donatar, or be ony cled with their richt, to marie onie agreeable partie, without disparage offered to him, refusis to do the same and maries ony uther person, without the license and consent of the superiour or his donatar, he aucht and suld, be reason of his contempt and disobedience, pay not only the single availe of his mariage, but also the double thereof; that is als meikle againe as the single, be the modification of the judge, after the zeirliche rental, availe, and quantitie of the landes and living pertening to the heir. And mairover, in this case, be the auld lawe of this reame, it is leasum to the superiour to hald and reteine the landes, albeit the aire be of twentie-ane zeires of age, until he be compleitlie satisfied of the said double

availe, "Leg. Forest. c. de hæredibus, 64. And it is to wit, that the said requisition suld be maid in this manner: The superiour, his donatar, or the assignay maid and constitute be the donatar, or ony uther person havand richt thereto, aucht and suld be himself, or be his lauchfull procuratour, havand special power in writ to that effect, offer to the aire, personallie apprehended, then being of lauchfull age for mariage, ane agreeable partie, expreemand the said persones name and surname, without disparage to him, siclike beand of lauchfull age, and convenient for mariage, and require the said heir to solemnizat and compleit the band of matrimonie in face of halie kirk, with the person that is offered; and for compleiting thereof, assigne and affix ane lauchfull day, to wit, the space of threttie daies at the least to him to compleit the samin within ony kirk, appoynted be the maker of the offer to that effect. And in the meantime of the said requisition, or before or after the samin, the donatar, or ony uther assignay, havand right and title of him or of the superiour, (for the superiour himselfe needis nocht to mak ony intimation of his right and title, he beand notourlie knawin to be superiour) suld mak be himselfe, or be his procuratour, intimation of the richt and disposition maid to him, and schaw the same, and

The forme
how ane
aire suld be
required to
marie.

mak the samin patent in presence of the said aire, and cause the samin to be read before him, or give or offer him ane copie thereof, to the effect that he thereafter may not pretend nor alleage ignorance thereanent. And thereafter the said person, viz. the superiour, or any other cled with his riches be quhom, or in quhais name the said requisition and intimation was maid, aucht and suld personallie, or be his procuratour, compeir at the day and kirk appoynted of before; bringand with him the said partie offered in proper person, reddie and willing to marie, quha was offered in mariage; and there in lauchfull time, before twelve houres of the day, offer him reddie to accomplish and fulfill that quhilk he offered and required to be done of before. And to that effect, there remain quhill the sermon or divine service be done, or quhill ane heure after noone. And gif the air compeiris nocht, or compeiris and refusis to marie, he suld take instruments thereupon in the hands of ane sufficient notar, of the refuse maid be the aire, or of his none-compearance, and the offer of the agreeable partie, togidder with the intimation foresaid, quhilk cannot be proven be witnesses, bot be writ, Pen. Feb. 1567. The Laird of Drumlangrig contrair Marion Carrutheris, 21. Junij. 1575. The Laird of Glenberuie contrair the Laird of Vdny.

MARITAGIUM. Tocher Gude. "Lib. 2. c. dos autem 19. in fine, c. " potest. 21. cum seqq. Vid. Dos."

Præco
Regis.

MARUS, an officiar or executour of summondes, Ja. 1. p. 9. c. III. p. 13. c. 140. Vide "Recordum." He is utherwaies called "Præco regis, Lib. " 1. cap. cum autem, 8." Quhair it is said, "Quod die dominico vox " præconis cessare debet," because na summons suld be execute upon ane Sunday. The Kingis Maire is of ane greater power and authoritie nor the messengers or officiares of armes, and speciallie in justice aires, and punishing of trespassoures. Bot now the said office is given in fee and heritage to maires of fee, quha knawis nocht their office, bot are idle persones, and onely dois diligence in taking up of their fees from them to quhom they do na gude nor service to the King.

MATERTERA, properlie is the mother sister, "Quasi mater altera." Bot sumtimes improperlie it is taken for the father sister. In Latin "Amita, " For Lib. 2. c. Deficientibus 34. Post Avunculum, h. c. patrum eiusque " liberos, matertera eiusque liberi habent jus successionis." And be the law of this realme, the bairnes descendand of the mother sister hes na richt of succession. Quhilk in the awin place and degree is competent to the bairnes borne of the father sister; quhilk is manifest. "De iudicib. c. hæredum, " 113. c. Item Nota. 115. vbi expresse, matertera dicitur esse amita, vid. " Avunculus."

MELLETTUM, Medletum, lib. 1. c. 2. Ane French word Melle, dissension, strife, debate, as we saye, that ane hes melled or tuilzied with ane uther. And in the actes of Parliament, and practique of this realme, Claudmella is ane fault or trespasse quhilk is committed be ane hoate suddentic, and nocht of set purpose, "præcogitata malitia, Jam. 1. 11. Mar. c. 51. And " in Libro M. Willielmi Skene, fratris mei, Commissarii Sancti Andree, fol. " 121," it is witten, that flycht-vyt is libertie to hald courts, and take up the unlaw "pro mellitis." Because flycht is called flyting, in French "melle," quhilk sumtimes is conjoined with hand-streikes. And in summe buikes "Placitum de melletis," is called the mute, or pley of beating or stricking. Lib. 1. c. 2.

MENETUM; "Leg. Forest. c. 2." Ane stock horne. In the quhilk place it is wrangouslie written "Cornare minutum, pro Cornare menetum," to blaw ane stock horne, quhilk commonlie is maid of timmer, wood, or tree, with circles and girds of the same, quhilk is zit used in the hie-landes and iles of this realme: quhairof I have scene the like in the countrie of Helvetia, in the zeir of God ane thousand five hundreth sextie aucht, amangst the Zuitzers.

MEREMIUM, muremium, the timmer of ane house. Lib. 4. c. si quis. "55." In the English lawes, "Carta de Foresta," it is called "merimium." And ane charter given be "Jacobus Senescallus Scotiz, (King James the First, before his fathers decease), to Thomas Browster, of the landes of Sacerland, beside Paslay, now perteing heretable to Matthew Steward of Barscube, containis "potestatem incidendi meremium;" that is, licence and power to cutte sa meikle green wodde in the Kingis Forest of Raise, as suld be necessar to the said Thomas to big houses to his awne use.

MESE of herring, centeins five hundreth, for the common use of numeration, and telling of herring, be reason of their great multitude, is used be thousandes; and therefore ane Mese comprehendis five hundreth, quhilk is the halfe of an thousand. From the Greek word "meson," in Latin "medium."

MESSUAGIUM, "Lib. 2. c. dos autem, 19. c. Si quis plures 30. cum "seqq." Ane principall dwelling place, or house within ane barronnie, quhilk in the laws of England is called manour, ane hall, place, or court, ludge, or manour house. Albeit Valentine Leigh, in his buik of surveying of lands, affirmis "messuagium" to be the tenement or lands arable. And the dwelling-house or place, or courte hall thereof, to be called Sit, from the Latin "Situs," quhilk we call the seate or on-sette. And it is not leasum to give the principall message to the wife within burgh in liferent. "Leg. "Burg. c. Nullus, 107." Manour,

Servitium
militare.

MILITES, "Leg. Malc. Mak. c. 2." And generalie in the auld lawes of this realm, ar called freeholders, haldand their landes of barons in chief; quha has na power to hald courts of life and lim, bot onely of injuries, wrang, and unlaw. Bot "militare servitium," knichtes service, is that manner of halding of lands quhilk is called service of ward and relieve. "Et miles opponitur Soccomanno," and he quha haldis his landis "Per militare servitium, lib. 2. si quis, 30."

MISERICORDIA, Ane merciment, amerciament, or unlaw. "Leg. Forest, c. 5. d. judic. 40. Misericordia domini regis," or the Kingis merciment in purpresture. "Lib. 2. cap. dicitur. 75. vid. forisfactum, vide Amerciamentum."

MOTE, mute, pley, action, quarrell. Quhen King Malcolme the Second gave all his landes to the barronnes of this realme, he reteined to himself "montem placiti de Scona," the mute hill of Scone, quhair he might hald his courtes, and do justice to his subjects in deciding their pleyes and controversies. "Leg. Mal. Mak. in prin." Mute in the lawes of this realme is called "placitum." And like as in the civil law, actiones are divided in civil and criminall, swa "placitorum, aliud est civile, aliud criminale. Pleyes ar civil or criminall. Civil ar called actiones of injuries, wrang, and unlaw. "Leg. Malc. Mal. c. 2." And concernis pecuniall paines or lands and heritage. Criminal pleyes touchis life or lim, or capitall paines, called "poena sanguinis, Lib. 1. c. 2. c. 3."

MORTGAGE, "mortuum vadium, dictus pignus, cujus fructus, vel reditus percepti, in nullo se acquietant." It is ane French word, signifies ane deed wed, sik as ane certaine summe of silver given upon lands in wad-set, and under reversion; quhilk is called ane deede wed. Because, be the auld law of this realme, the profit thereof, that is, the annual of the silver, is reckoned as ane part of the stock and principall summe. And therefore the said stock is dead, without ony profite, as ane barren and dead tree, quhilk producis na fruit. "Lib. 3. c. 4. c. 6." Contrair the common forme of alienation of landes under reversion, dailie used within this realme, called "pactum de retro-vendendo," quhairbe the annuel is zeirlye payed, untill the redemption of the landes. At the quhilk time the principall summe suld be likewaies compleatlye payed. And swa baith the annuell and the stock being payed, the profit is not reckoned in the stock, bot ilk ane of them ar severallye reckoned, and severallye payed, sa-meikle for the profite, and sa-meikle for the principall summe. "Vide Vadium."

MULIERATUS Filius, is ane lauchfull sonne, gotten with ane lauchfull wife. "Lib. 2. c. si autem, 22. Ex legitima muliere seu uxore, quia mu-

"lieris appellatione uxor continetur. L. Mulleris, 13 & ibi Gl. de verb. "signif."

MURTHURUM, "Lib. 1. c. 2. lib. 4. c. 7." Quhairof sum is called privat, that is mannis slauchter, quhairof the author is unknowin; quhairof the inquisition perteinis to the crowner. As quhen ane person is found slaine or drowned in ony place or water. Uther is public, committed be forethocht fellonie, "Quia non debet murthrum adjudicari ubi infortunium intervenit; "sed locum habeat murthrum, in intersectis per feloniam." And swa murther is committed be forethocht-felonie, and not be suddaintie, "Chaud-mella, "aut infortunium," that is, be chaunce or fortune. "Leg. Malc. Mak. cap. 2." And in the laws of England, Anno 13. Edward II. cap. 1, murther is quhen ony man be ane propensed malice, lyes in waite to slay ane uther man, and according to his malicious intent slayis him. "Molinæus in stil. cur. parl. "part 1. cap. 13," conforme to the law of Normandie, "Lib. 12. cap. 1." affirmis that murther is different from simple slaughter. Because murther is committed wittinglie and willinglie be ane quha of set purpose lye quietly in awaite for that effect. And slauchter is committed without ony forethocht fellonie, up on ane haistie suddaintie, quhilk in Latin is "Rixa," and in French "Chaud- Rixa. "mella," in the quhilk place he writtis that three crimes perteinis to the high justice, wilfull fire, ravishing of weemen, and murther. Bot be the law of Pleyes of this realme, foure crimes ar called the foure pointes of the Crowne; wilfull the crown, fire, ravishing of weemen, murther, and robberie, or rief; because the jurisdiction or cognition thereof perteinis allanerlie to the King, and to na subject spirituall nor temporall, except the samin be specially granted to him be the kin. "Lib. 1. c. 2. leg. Malc. Mak. c. 4. lib. 4. cap. Die lunæ, 13. ass; "reg. Da. c. 1."

N

NAMARE, namos capere, to take ane poynd, or ane distresse. It is an auld Saxon word for "naman," in Latine "pignorari sive pignus auferre," and "namatio" signifies the taking of ane poynd. "Leg. Britonum. verb. "Pignorari." In the law of Normandie "Nami" commounlie signifies ony Namt, gudes or gear, moveable or unmoveable, taken for execution of ane decreet. "Pignora capta, et bona capta pignori, ut in L. a divo Pio, 15. ff. de re judi- "cat." Be the laws of this realm, na poynd suld be taken bot for ane confessed or proven debt. And the samin suld be publiclie shawin and made manifest to all passengers be the way, and to all parties following the samin. "Lib. 4. cap. si quis namos 30. cum seqq." Na man may poynd within and uther mannis boundes or jurisdiction bot for debt auchtand to him, except

M

Kingis Bailie be present. The poynd or distresse suld be conform to the quantitie and valure of the debt. Na person may be poynded but the debtour, or his sovertie or pledge. The poynd suld remaine within the samir barronnie quhair it is taken, in ane place perteing to him quha takis the samin, or at the least in the nixt adjacent barronnie within the samin schireff-dome, and not in fortalices or castelles. "Stat. 2. Rob. Br. cap. Item ordinatum, 8. curia de namo vetito:" that is, of deforcement be the auld law, perteinis to the King allanerlie. "De Maritag. cap. sciendum, 17."

NATIVE borne slaves or servandes, "Vide Bondagium."

NON-ENTRES, is quhen ane vassall, vest and saised in the fee and propertie of the landes deceasis, leavand behinde him ane aire, quha beand of lauchfull age, may enter to the landes be taking of sasine thereof, and zit enters nocht. In the quhilk case, the landes ar in the handes and power of the immediate superiour, be reason of none-entresse, "Propter negligentiam hæredis, jus suum non prosequentis. Stat. Rob. 3. cap. nota, 21."

Twa kinds
of none-entresse.

Mairover, there is twa kindes of non-entres; the ane simple, nocht followand after ane warde, in the quhilk the superiour of the landes, untill they be declared be decreete of ane ordinar judge to be in none-entresse, suld have allanerlie the retoured maill thereof, conforme to the new extent. And after the declaratour, the superiour may remove the tennentes, or occupie the landes as he pleasis, induring the time of the non-entresse. The uther kinde of none-entresse is that quhilk followis after ane wairde: As quhen landes are halden be service of warde and relieve, and the aire is minor, and may nocht enter. The samin landes perteinis to the superiour be reason of warde, and nocht of none-entresse. For quhair there is warde, there is na none-entresse, be reason the warde, sa long as it indures, stops the none-entresse. Bot quhen the warde expyris, togidder with the twa termes of the relieve, the none entresse begins, gif the aire beand of perfite age, enteris nocht to the landes, and obtteinis saising thereof. The quhilk none-entresse requires na declaratour, bot is of the like nature with the ward preceidand. And during the time thereof, the zeirly mailles and dewties of the landes, as they give be tack and assedation, perteinis to the superiour; or he may remove the tennentes and possessoures therefra, and occupie the samin as he please, like as he micht do in the time of the warde. Mair-over, this kind of none-entresse beand given and disponed be the king, or uther superiour, to the appeirand aire himselfe, or to ony uther person, is sufficient and valiable to the donatar for all zeires and termes preceiding the gift and disposition, and three termes after the perfite age of the aire allenarlie; and endis and ceasis after the ischue and out-running of the said three termes. And gif the aire enters nocht within the said space, it is leisum to the King, or uther superiour, to dispone of new the said none-entresse to quhom he pleasis, to be used be him unto the entrie of the lauchful aire, as

was decerned and ordained be the Lordes and Auditoures of the Checker, in the moneth of Julij 1596; and conforme thereto decided be the Lordes of the Session, 9 Julij 1597. The Laird of Capringtoun contrair the Laird of Hessilhead, quhilk is not disconforme to the lawes of the fewes, quhairbe the aire of the vassal, not desirand investiture or possession frae his superiour within zeir and daye after the decease of the vassal, his predecessour, tines and forfalties his few, and the samin perteinis to his superiour. “ § 1. Et “ ibi, Gl. quo temp. miles investitur, petere debent. lib. 1. de feud.”

NOVA dissasina, recent spulzie or ejection. “ Vid. Dissassina.”

O

OCHIERN, “ Ogetharius,” is ane name of dignitie, and of ane freehalder. “ Stat. Alex. c. recordatio, 26.” and appeiris to be of equal honor and preheminance with the son or daughter of ane Thane, quha baith hes the like “ Marcheta,” viz. two kids, or twelve pennies, “ lib. 4. c. sciendum, 63.” And likewise the Cro of ane Oye of an Thane, and of ane Ochiern, is four kye, “ lib. 4. c. statuit 64.” And the unlawe quhilk the King may tak fra ane Thane is sex kye, and from ane Ochiern fifteen scheip, or sex schillings. “ Ass. Reg. Da. c. recordatio, 17.”

ORA, ane auld Saxon worde, and signifies mettall, sik as brasse or golde. And mair over, in auld times it was ane piece of cunzied silver or golde. For “ tres oræ aureæ,” are the price of ane cove, lib. 4. c. sciendum, 63. From this comes the worde zit commonly used, “ Vre,” as leid “ Ure;” and Ure. in the Garviach within the schireffdome of Aberdene, there is ane hill called “ Dounyndure, monticellus metalli:” and the scheep there pastured hes their teeth colloured with zellowe coulour, quhilk is ane taken of abundance of mettall.

ORIGELLUM, “ quasi aurigellum,” ane Habergion maid of mailzies, quhair of the edges are of mailzies of zellow coulour, resembland the coulour of golde or brasse. “ Stat. 2. Rob. B. c. 2. ordinatum, 27. quhair it is called “ Habergellum.—Vid. Hawbert.”

OUT-FANG-THIEF, “ Vid. Infang-thief.”

P

PANNAGIUM Porcorum, ane French worde, signifies the deutie quhilk is given to the King for the pastorage of swine in his forrestes, "Leg. forest. c. 5. 6, 8." As it is manifest in the lawes of England, in the chartour of forrestes, quhair "pannage" is called ane certaine summe of silver, quhilk the awner of ane parke, or of some great wood, quhairin there is great store and abundance of maste, aik, betche, or uther trees, usis to take of his tenants or uthers for their swine, that sall feed there, betwixt Michaelmes and Martinemes. Item, "pannagium" signifies ane pairt of the Kingis domaine, or propertie, given to his second, or uther zounger sonne, or cousing, quhair of Chopinus writes, "de domanio regis Franciæ." Bot hereof no mention is maid in the lawes of this realme.

PARTICATA, "vel perticata terræ." From the French word "perche," meikle used in the English lawes, ane ruid of land, "leg. burg. c. 1. c. particata, 140. stat. Wilh. c. particata, 13. quon. attach. c. de brevibus, 31." It is of verity, that three beare cornes without tailles, set togidder in length, makis ane inche; of the quhilk cornes, an sulde be taken off the mid rig, an off the side of the rig, and an off the furrow. Twelve inches make ane fute of measure. Three fute and ane inche makis ane eln. Sex elnes lang makis ane fall, quhilk is the common lineall measure and mette. And sex elnes lang, and sex elnes broad, maks an squair and superficial fall of measured land. And it is to be understand that ane rod, ane raip, and lineal fall of measure, are all ane, and signifies ane thing, for ilk ane of them conteinis sex elnes in length, albeit ane rod is ane staffe, or gade of tymmer, quhairwith land is measured, in Latin "pertica." Ane raip is maid of towe, sik as hempt, or uther stuffe, and sa meikle land as in measuring falles under the rod or raip in length, is called ane fall of measure, or ane lineall fall, because it is the measure of the line and length allanerly. Likeas the superficial fall is the measure baith of the length and the bredth, "quia linea est mensura solius longitudinis, superficies vero est mensura longitudinis, et latitudinis." Item, ten falles in length, and four in bredth, makis ane ruid, four ruid makis ane aiker. And swa ane discreet and true man may measure ilk aiker of land, lang or schort, with rod or raip, be the measure of the fall, swa that he keepe just count and gud remembrance that the endes of the rod or raip be richtly and cayen laide, without fraude or guyle. But it is necessare that the measurers of land, called landimers, in Latin "agrimensores," observe and keep ane just relation betwixt the length and the breadth of the measures quhilk they use in measuring of lands, quhair-

Inche.
Fute.
Eln.
Fall.

Rod.
Raip.
Fall lineal
and superfi-
ciall.

Ruid.
Aiker.

Landimers,
Agrimenso-
res

anent I find na mention in the lawes and register of this realme, albeit ane ordinance thereanent be maid be King Edward the First, King of England; the 33. zeir of his reigne; and because the knowlege of this matter is very necessare in measuring of lands, dayly used in this realme, I thought gud to propone certaine questions to John Naper, fear of Merchistoun, ane gentleman of singular judgment and learning, specially in mathematicque sciences, the tenour quhairof, and his answeres maide thereto, followis.

First, be quhat rule sall we understande the length and bredth of the fall? Length and
breid of ane
fall.
It is answered, There is twa sortes of falles, the ane lineall, the uthir superficiall: the lineall fall is ane met wand, rod, or raip, of sex elnes lang, quhair-
be length and bredth are severally met. Ane superficiall fall of lande is sameikle boundis of lands as squairly conteinis ane lineall fall of bredth, and ane lineall fall of length, quhairof followis, that be the lineall fall land is measured, and be the superficiall fall lande is rekned. Nowe quhair it is inquired be quhat rule the length and bredth of ane fall sall be understand, I answer, That quhensoever the elnes of bredth being multiplied be the elnes of length, do produce 36 elnes, the number product is ane superficiall fall; and the said bredth and length are the just bredth and length that makis ane fall. Swa 36 elnes lang, of ane elne broad, are ane fall of land. Item, auchteene elnes lang, twa elnes broad, are the like: alswa twelve elnes lang, of three elnes broad, or nine elnes lang of foure elnes broad, are ane fall. Lastly, sex elnes alwayis, that is to say, sex elnes lang, and sex elnes broad, makis ane fall. To this fall the little ruid, or ruid of warke, or of buirdes, or of maison, or sklait wark, is equal, quhilk is maist properly the ruid, as after followis.

Secondly, how many kindes of ruids are in use? Ans. Twa, quhairof the Twa kinds
of ruid.
ane is proper, the uthir improper. The ruid properly is ane superficiall fall, and conteinis threttie sex squair elnes: Ane squair elne being the boundes of ane elne in breadth, and ane elne in length squairly inclosed. The uthir vulgare and improper ruid of land conteinis fourtie of thir former ruides, or superficiall fallis, and is the quarter of ane aiker of lande, because foure of thir ruides makis ane aiker, as said is.

Thirdly, be quhat rule may the just measure of ane aiker in length and bredth be understand? It is answered, Multiply be arithmetical multiplication the number of the falles that are in the length of the land, be the number of fallis that ar in the bredth thereof. Every aucht score fallis of the number Length and
bredth of an
aiker.
produced, and resulting of the said multiplication, is ane aiker; and therefore aucht score fallis of length, and ane fall of bredth, makis ane aiker, and foure score fallis of length, and twa fallis of bredth, makis ane aiker. Item, fourtie fallis of length, and foure fallis in bredth, makis ane aiker. Alswa twentie fallis in length, and aucht fallis in bredth, makis ane aiker. Lastly, ten fallis in bredth, and sexteene fallis in length, makis ane aiker.

Fourthly, seeing there is ane kind of measuring of land be rod and raip, The manner
of measuring
quhat is the form thereof? And gif there be ony maa forms, how are they

of lands
be rod or
raip.

called? And quhat is the forme and manner of the samin? It is answered, There be knawin to expert mathematiciens mony and divers wayes to mette land, all agreeand togidder in ane; bot of the vulgar people there is bot ane forme of metting used and understand, to wit, be rod and raip, that is to say, be ane rod or gade of six elnes lang, or be ane string or coard of six elnes lang, stented betwixt twa staves, the coard being ane schaft length abone the pykes or nether endes of the staves. The said rod or raip, or either of them is called ane fall; to wit, the lineall fall foresaid. With these fallis ilke square piece of lande is met over the middis, quhat fallis and elnes it hes of length, and thereafter is met croce over the middis quhat fallis and elnes it hes of bredth. Thereafter the fallis and elnes of the length on the ane pairt, and the fallis and elnes of the bredth on the uther pairt, are multiplied togidder, and the producte schawis the number of the aikers, ruides, elnes, quhilk the said piece of land containis. As for example, gif the piece of land be 51 fall 3 elnes of length, and 10 fallis 2 elnes of bredth, multiply 51 fallis 3 elnes, or 51 one half fallis, be 10 fallis 2 elnes, or be 10 one-third fallis, the product will amount to 532 one-sixth fallis, or 532 fallis 6 elnes; quhairof every aucht score fallis are ane aiker. Swa 532 fallis 6 elnes are three aikers and ane quarter, 12 fallis and 6 elnes of met land.

PATRIA, "*Assisa, vel recognitio per assisam.*" Ane assise or inquest of cuntrie men, quhilk is called "*recognitio patriæ*, Lib. 3. c. cum autem, 6.— "*Vide Bona patriæ.*"

PEDELLUS, "*Leg. burg. c. citatio. 109.*" The serjand or beddle of the burgh, quha suld execute summondes, make attachements, or take poindes. "*Quon. attach. c. nullus, 57.*" quhairof they have na power without their awin jurisdiction. "*Ass. reg. Da. c. nullus, 13.*" "*Dicitur autem pedellus a pædo, hoc est baculo,*" because all sik serjandes suld use ane wand, staff, halbert. Ja. I. p. 6. c. 99.

Pedder.

PEDE pulverosus, ane French word, "*pied puldreux,*" dustie-fute, or an vagabound, speciallie ane merchand or cremar, quha hes na certaine dwelling place, quhair the dust may be dicht fra his feet or schone, "*de Maritag. c. si quis, 9. leg. burg. c. si burgensis, 141. de judic. c. 47.*" to quhom justice suld be summarlie ministred, within three flowinges and ebbings of the sea. Ane pedder is called ane merchand or cremar, quha beirs ane pack or creame upon his back, quha are called beirares of the puddill be the Scottesmen in the realme of Polonia, quhairof I saw ane great multitude in the town of Cracovia, anno Dom. 1569.

PENSION, ane dewtie, sik as ane annual rent; for that quhilk in the acte of Parliament, Ja. II. p. 11. c. 41. is called the pension of Cadzow, in
Pension of Cadzow.

the Checker rolles is called the annuel-rent of Gadzow. And siklike in the samin place, mention is made of the pension of the ferme meile of Kirkpatrick, quhilk conteinis five chalder of ait-meill, quhilk the abbot and convent of Paisley payis zeirly furth of the kirk of Kirkpatrick to the K. as ane pairt of his annexed propertie, as is manifest in the schireffe rolles of the Checker of K. Ja. III. 1487. In "libris feudorum," Soldata is an zeirly frie gift and donation, induring the lifetime of the giver, and is swa called "a solida, quia pl rumque in solidorum donatione consistit, § 1. quia dicatur "marchio, lib. 1. de feud." Pension of Kirkpatrick. Soldata;

PLACITUM, from the French word "Plaidir," pley, contention, strife, Pleyes of or debate. "Placitare, significat litigare et causas agere. Molinæus in stil. the crown, "suprem. cur. par. part 1. c. 6. part 2. c. 3. Et D. Smith, lib. 2. c. 10." Of the commoun weil of England. "Vide Mote. Placita coronae." Pleyes or criminall actiones perteining to the Kingis crowne and jurisdiction allanarlie, or to his justice generall, quhilks are four in number; robberie or reife, ravishing or deforcing of weemen, murther, and wilfull fire, sik as burning of houses wilfullie and maliciouslie, vice "Murthrum." Quhairof, or of ony ane of them, gif ony happenis to be convict, all his gudes perteinis to the King allanerlie, in the samin manner as is statute of the gudes of traitoures. "Leg. "Mal. Mak. cap. 3."

PLEGIUS, ane pledge, borgh, or cautioner, "dimittere terras ad plegium," to let landes to borgh, is quhen ony controversie being for the possession of landes, the samin, after inquisition and tryall taken thereanent, given and committed to the last lauchfull possessour of the samin landes, under borgh and caution that he sall restore the samin to him quha sall be found to have richt thereto, Ja. II. p. 14. c. 62. Or quhen twa persones contendis be way of deede and armes for the possession of ony landes, the superior thereof may recognosce or take to himselfe the possession of the landes untill it be tryed quha was last lauchfull possessour thereof, and then let the landes to him to borgh, and under caution, as said is. "Stat. Ro. III. c. nota 21. "Item the 12. No. 1500." Certaine corns growand upon debatable landes, betuixt the L. Ruthven and the Laird of Copemalindie, be decreit of the lordes, are lettin in to borgh to the said laird, he findand caution that the samin sal be furthcummand to them quha recovers the samin be law, without prejudice of the richt of onie of the parties thereanent in time cumming. And likeas the over-lord or judge, for the causes foresaid, lettis landes to borgh to the possessour thereof, the tennent or possessour "petit terras ras ad plegium." "demitti ad plegium," desires the landes to be lettin to him to borgh, or under caution. Stat. Rob. III. c. 4. Ferre ter-

PORTEOUS, portuis. Ja. I. p. 13. c. 139. Ja. III. p. 14. c. 99. Ja. V. p. 3. c. 5. "a portando," quhilk signifies to carry or beire; in French "portes

"vous, and signifies ane catalogue, contenand the names of the persones indited to the justice aire, quhilk is given and delivered be the justice clerk to the crowner, to be attached and arreisted be him, to compeire and answer to sik accnsationes and crimes as sal be impute unto them, and the porteous containis the names of them quha are of new indited, and the names of them quha were indited of auld and of before, and compeired not: And quhen onie justice aire is cried, or proclaimed, command is given be the justice to warn all persones, alsweill indited of auld as of new, to compeire in the said aire to underlie the law. The crowner receives the porteous, as said is, and carries the samin with him untill the attachements and arreistments be maid, conforme thereto, and reports the samin again to the justice court, that thereby he may be controullid in execution of his office, sa far as concernes the making of attachements and arreistments, or probation theirowf.

POST-NATUS Filius, ane second sonne narrest to the first begotten, conforme to the French word, "*lepius aisne*, lib. 2. c. si ergo, 23. c. præterea, "25. c. maritus, 32. l'aisne," is the first borne sonne, and therefore "le puis aisne" is "post primo-genitum," the second sonne.

PRISÆ, ane French word "prinses," in Latine "captiones," sik as ane poynd, distres, or moveable gudes taken for execution of ane decreit; for be the lawes of France, "*prisæ sunt rerum mobilium; sasina vero immobilium, quia bona immobilia non capiuntur, sed saisiantur. Rebuffus in constitut. Reg. in tract. de liter. obli. art. 5. gl. 2. et de praeconum licitationibus, art. 1. gl. 2.*" Quhairanent I find ane ordinance maid, "de modo capiendi prisas," be King David II. 18. Februar 1369, the 40 zeire of his reigne. "*Prisae seu captiones domini regis, persolventur et capiuntur, secundum consuetudines antiquitus approbatas, et de terris illis de quibus prisae regis et servitia debent sumi, et quod in iis faciendis non fiet taxatio juxta numerum davatarum sed secundum verumvalorem bonorum.*"

PROPORCITAS, "proportatio assisae," the proport, report, declaration, or deliverance of ane assise, "*Stat. Alexand. c. statuit dominus, 5. quon. attach. c. si quis appellet, 53. assisa reg. D. c. 9. c. statuit, 30. c. statuit Veredictum. dominus, 38.*" Utherwise it is called "veredictum assisae," the verdict or suith-saying of ane assise; because the assisours are sworne to declare the trueth and veritie, and therefore are called "juratores." Likeas the assise is called "jurata," or "jurata patriae, sive vicineta, lib. 2. c. dicitur, 74." And in the English lawes, ane jurie.

Three kinde of purp- PURPRESTURE, Purprision, ane French word, for ane wrangeous usur-
sion. pation, taking, or occupation of ane uther mans landes, quhair of there is three kinde, "*Lib. 2. c. dicitur, 74. de judicib. purprestura, c. 138.*" The

first is, quhen ony man occupies unjustly ony pairt of the Kingis domaine and proper landes; or quhen ony stoppis or closis up the Kingis common way, passage, or streete; or returnis or divertis rinnand waters fra their right course; or, within the Kingis towne and burgh, occupies the Kingis calsay or commoun gaite, biggand upon onie part thereof; or removeand onie thing there-fra; or converting onie pairt thereof to his awin use. And generally, quhen onie wrangeous occupation is maid to the hurt and skaith of the Kingis tenement, the Kingis street, or common way, or of the Kingis burgh, the quhilk kind of purpresture suld be decided before the Kingis justice, and his deputes, be ane condigne assise. And he quha is convict thereof sal be in the Kingis mercie, and punished conforme to his will in his bodie, and in all his landes quhilk he halds of him; and mairver, sall restore that quhilk he unjustly bigged and occupied. The second kinde is, quhen onie vassall occupies and usurps ony landes against his over-lord, uther than the King. Quhilk controversie may be decided be the over-lord in his awin court; and gif the vassall is convict to have done wrang, he tynes perpetually all the landes quhilk he halds of that superiour. The quhilk jurisdiction and power of halding of courtes of purpersion perteinis to ane barron, and uthers quha are abone him in power and dignity, sik as earles and lords. For na vassall, subject, nor uther tenent, under an barron, hes power to had sik courtes. Ja. III. p. 10. c. 79. The third kind of purpresture is against ony uther except the King and the superiour, as betuixt nichtbor and nichtbor, subject and subject, quhen ane wrangeouslie occupies the land pertaining to ane uther, or troublis him in his meithis and marches; quhilk molestation perteinis to the schireffe, to be tried before him, be ane brieve, “de nova dissasina,” or “de rationabilibus divisis.” Be the law of England, “an. 4. Edward I. de bigamis, c. 4.” gif onie usurps and occupies within the Kingis libertie, or ony uther place, contrair the King, incontinent without proces or ordour of law, the King tuik the land in his awin hand, and thereafter it was leisum to ony person havand entres to compleine thereanent. The like forme is permitted be the lawes of this realme, anent the Kingis customes, Ja. I. p. 1. c. 8. And his annexed propertie, Ja. II. p. 11. c. 41.

PUTAGIUM, ane French word, huiredome or fornication, “lib. 2. c. in custodiis, 50. c. ult. 53.” Quhair it is manifest that ane air femaill, being within warde, and of les aige, and committand fornication, tynis and forefaults her pairt of the heritage, and the samin accrescis and perteinis to the rest of the co-heirs or comportioners, gif onie be. And gif there be an heretrix allanerly quha committis the said fault, all and haill her heritage perteinis to the superiour: Bot gif an heretrix of landes hes bairnes lauchfully gotten in marriage, and after the decease of her husband, in the time of her viduitie, committis fornication, neither sche nor her bairnes tynis the

heretage. "Quia putagium matris non adimit haereditatem." The huire-dome committed be the mother dois nocht disherish the lauchfulle bairnes,

Q

QUARENTENA viduarum, in the statutes, Rob. III. c. de viduis, 22. from the French, "la quaresme des vefues," signifies the priviledge of fourtie daies granted to widdowes after the decease of their husbandes, conforme to the lawes of England, anno 20. Henr. III. c. 1. Quhair it is statute, anent widdowes, quha, after the death of their husbandes, may nocht have the dowrie without pley, That quhasoever deforcis them of their said dowries, of the landes quhairin their husbandes died vest and saised, and it sall happen the said widdowes to recover the samin theirafter, be pley or process, they quha troubled and molested them, being convict of sik wrangeous deforcement, sall zeild and pay the damnages and skaith to the samin widdowes; that is to say, the valour of the haill dowrie belonging to them, from the time of the death of their husbandes, unto the day that the saides widdowes obteneis decreet in judgme. And the said deforcere nevertheless sal be americiat at the Kingis pleasure. In the quhilk place it is plaine, that "quarentena viduarum" conteinis the space of fourtie daies; during the quhilk space ane widdowe may tarry and remaine in the chiefe dwelling place of her husband, untill her dowrie be assigned to her, and in the mean time suld be susteined upon the profites of the heritage. As it is likewaies written in "magna carta," "anno 9. Hen. III. c. 7." quhilk is conforme to the lawes of France, as writtis Joan. Papon in his arreistes, "Lib. 15. Tit. des dots. c. 7. et lib. 10. "tit. substitutiones, c. 30. per authenticam praeterea, C. unde vir et uxor," and in the burrow lawes of this realme, the second or third wife of ony burges, after the decease of hir husband, may nocht remaine in the house perteing to his aire, gotten of ane uther wife, bot onlie fourtie daies, "Leg. burg. c. si burgensis duas, 25."

QUHATECUS, ane kinde or forme of bread, quhilk we call ane fage, or phage, from the Greeke word "phago comedo," to eat.

R

RACHETUM, ane French word, "Rachapt," ane ransom. In sum buikes it is called "Rechatum, transpositis literis." Stat. 1. Rob. Br. c. 1. Stat. 2. Rob. Br. c. 7. quhair it is called thief-bote; and in sum auld buikes "rachatum" is called thief-bote, or redemption taken for thievis, robbers, or uther malefactours.

RAPTUS, rape, ravishing or deforceing of weemen, quhilk is ane of the four points or pleyes pertaining to the Kingis Crown, and to nane uthers. Vide Placitum, vide Murthrum. Ravishing is an crime, quhairof ane woman accuses ane man, alledgand she is oppressed or defiled be him against the Kingis peace. "Lib. 4. c. raptus, 9." The quhilk complaint sulde be maid the samin day and night in the quhilk the crime is committed. "Quia lapsu diei hoc crimen præscribitur. Quo. attach. cap. De cætero, 48. Statuit. Wilh. c. Item. Statuit, 9." In the lawes of England, Westm. 11. c. 34, rape is quhair ane man ravishis, or takis ane uther mans wife, widdow, or maiden, violentlie, and hes adoe with her against her will: And albeit she afterward consent, zit it is fellonie, quhilk is confirmed be "Ches. in consuetud. Burgund. Rubric. 1. verb. Es droicts d'icellis, Nu. 43."

REIF, or robberie, is likewaies ane of the four pointes of the Crown. "Lib. 4. c. die lunæ, 13. Leg. Mack. c. 4. ass. reg. Da. c. 1." Robberie is quhen an man lyis by the Kingis hie way, passing to mercat townes, in woodes, ditches, or onie uther secreit place, quhair people cummis furth by, and robbis and spuilzies them, albeit he take away bot the valour of ane pennie or lesse, it is felonie; for the mala-pertnes of the deed, breaking of the Kingis peace, and the danger in the quhilk ane man is of his life, causis the offence to be the greater then gif the gear swa robbed or spuilzied had bin thieftuouslie stollen, as it is written in the lawes of England, An. 23. Hen. VIII. c. 1. In the law of Normandie, Li. 3. c. 1. robbery is the taking of other mens gear be force and violence; and the committers theirow in Latine are called "raptores," in French "voleurs," or "robeures," and is different from theft, quhilk is committed quietlie and privilie, without violence. Mairover, reife is an greater crime then theft, because reife is committed baith in the gudes and in the person of the possessour theirow; Difference betwixt reife and theft. theft is of the gudes and gear allanerlie. "Ches. in consuet. Burgund. rub. "1. § 5." Be the law of this realme, the complaint of reife or robberie suld be maid be him quha is robbed and damnified within the like time as is fore-

said of the ravishing of weemen, "quo. attach. c. de cætero, 48. lib. 4. c. raptus, 9."

RECOGNITION of Landes, is commonly used in the law and practice of this realme. "Sicut feudum dicitur aperiri domino; ita terræ dicuntur cadere in commissum: sicuti fit in hoc casu ob culpam vassalli, et in Emphyteusi," or fewe landes, "ob non solutum canonem seu pensionem, lib. 3. c. ex locato, 11." For the vassal tynes landes halden be him be service of warde, be reason of his awin fault, as sal be hereafter exponed; and the proprietar of fewe landes may tyne and forefault the samin for non-payment of the zeirly dewtie. "Cognoscere" is to knaw and understand, "recognoscere" is to knaw again, or at the second time to understand. For generally all superiours, of quhom landes are halden in chief, first hes bin proprietars of the samin landes; quhilk landes being annalied, and said be them heritably, to be halden of themselves and their aires, ceasis to be propertie to them, and becomes tenendrie immediately halding of them and their aires. And gif it happens the vassal or possessours, to quhom the landes are sauld, to commit ane fault or crime, quhairby he tynis and forefaultis the landes, the superiour hes entresse and regresse to the propertie of the landes, and may recognosce the samin, and as it were the second time vindicate to himselfe the propertie thereof. Swa the samin landes, quhilk were first propertie to him, and thereafter tennendrie, be reason of the alienation, nowe becomes againe propertie, and returnis to their first nature and condition. "Jure accrescendi, seu potius consolidatione proprietatis cum superioritate, ob culpam vassali." Recognition properly, in the practice of this realme, is quhen ony vassall or free tennant, haldand his landes be service of warde and relieve, sellis and annalies all and haill his landes, with their pertinents, or the maist part thereof, without licence, consent, or confirmation of his over-lorde. In the quhilk case, all and haill his landes, alsweill nocht annalied as annalied, and halden as said is, may be recognosced and resaised in the superiours handes, and baith the propertie and possession their of perteinis to him, to be bruiked or disposed be him at his pleasure, quhairof divers and sundrie practiques are extant in the registers in the daies of King James the Fourth, of gud memorie. The superiour understanding the landes to be wrangouslie annalied, as said is, incontinent their after may use the recognition their of, and without process or ordour of lawe, may take saising of the samin, conforme to the auld practik of this realme; Because the samin alienation is done to his dishonour and contempt be his vassal, quha suld do reverence and service to him, and therefore without his consent suld nocht do onie thing to dissolve the league and band quhilk is betuixt them. Moreover, the vassall may nocht make the said alienation, because their by he may becum puir, and unable to do to his superiour sik service as he suld do of the lawe. "Cuiac. lib. 1. de feud." And nocht withstanding that the saising is taken be the superiour,

The causes
of recogni-
tion.

gif the vassal or possessour tinis nor forfaulties na waies the propertie of the saides landes, until zeire and daie be out-run, swa that he doe diligence within fourtie daies after the said recognition, and taking of the saislag, to crave and aske fra his superiour the saides landes to him to borch, that is to repledge them, findand pledge and caution that he sall be reddie to do to his superiour, anent the saidis landes, all that equite and lawe requiris. " Stat. Rob. 3. c. 2." This kinde of recognition is conforme to the lawes of the fewes, " quia feudum amittitur, si fidelis, libellario nomine, amplius medietate in feudum dederit, aut pro pignore plus medietate obligaverit, § 1. quib. mod. feudum amittatur, et sect. 1. de alienatione feudi. Et in jure Canonico. c. 2. et ibi gl. extr. de feud. Porro libellarius contractus dicitur, *Libellarius contractus.* " venditio, quae fit scriptura interveniente, certo pretio, et certa pensione constituta, in annos singulos, ut post feudistas scribit Cuiac in d. § 1." Recognition of landes is sum times generallie taken monie waies. " Stat. Rob. 3. c. nota quod iste, 21." First, gif the vassall, deceasis the superiour may recognise and reteine all the landes halden of him until they be recovered fra him be the entresse of the righteous aire, and that be reason of none-entres. *Sindrie formes of recognition.*

2. After that the aire hes recovered the landes furth of the handes of his superiour: Nevertheless the superiour may recognise and retein the samin until securitie be maid to him for payment of the relieve.

3. Gif the vassal is fugitive for slauchter, and nocht law bidand, the superiour may recognise the land halden of himself, sa lang as the felon or manslayer happens to live. Conforme to the quhilk, be the actes of Parliament, be the liferent of the vassal, being zeire and daie at the horne, perteinis to the immediate superiour, except he be rebell for treason; in the quhilk case, his life-rent, and all his landes, gudes and gear, moveable and immoveable, perteinis to the King allanerlie, " Quia poena debet eidem applicari adversus quem committitur culpa." 4. Gif the vassal analies his landes, or the maist part thereof, without licence, consent, or confirmatione of his overlord, the overlord may recognise the same, as said is. Bot in this case, he is oblished to let the landes to borch, to his vassall askand and cravand the samin, within the lauchfull space of fourtie daies after the recognition, and saising taken, until it be tryed be the judge ordinar quhidder the cause of recognition be lauchful or nocht; quhilk being founde lauchfull, the judge suld counsell the King, and decern ony uther superiour to hald his handes fra the landes, and let them to borch to his vassall. And gif the cause be found just and reasonable, the judge suld decerne the propertie and possession of all and haill the landes to pertain and remain with the superiour. 5. Quhen twa or mair parties contendis be way of deed and armes for the possession of landes, the superior thereof may recognise and sequestrat the samin, until it be tried quhilk of them is lauchfull possessour: and thereafter let the landes to borch to him quha is found to have best richt of the possession.

6. The superiour may recognosce and reteine landes halden of him in chief, for service aucht to him furth of the samin landes. Bot be the practique of this realme, the service aucht to be proven and liquidat, and thereafter the landes may be lauchfully comprised.

7. Landes halden in fewferm, payand ane certaine zeirlic dewtie, "nomine feudi firmæ," may be recognosced be the superiour for none-payment of the few-dewtie, and that twa manner of waies. The first, "ex provisione legis et natura contractus." For the fewfermorer not payand his fewferm, for his ingratitude and unthankfulness tinis and forfaitis his fewferm be the disposition of the law, quhilk as zit was not in practique and use within this realme.

Clause irritant.

The second is, "ex provisione hominis, et conditionibus contractui insertis," quhilk is called ane clause irritant, as quhen ane clause and provision is contened in the infestment, that if twa or maa termes run in ane of non-payment of the fewferm dewtie, then and in that case the infestment of fewferme to be "irritum," null, and of nane avail: quhilk is conforme to the dayly practique of this realme, "Qui pacta conventa legem contrahentibus praescribunt. vide l. 1. et Tit. c. de jure emphyteu." Alwayes, be the acte of Parliament maid be Ja. VI. p. 15. c. 246, alienations of landes maid in fewferm are null for not payment of the few-dewties be the space of twa zeires, albeit na paction or provision be maid thereanente in the infestment.

Indorsation.

RECORDUM, "Recordatio, lib. 1. c. contingit. 31." quhairanent I find difficultie. Alwayes "recorda summonitionis," signifies the rehearse, report, or testification of the execution of the summondes, brieve, or uther precept, "Ja. 1. p. 9. c. 112." quhilk execution is now called "Indorsation." Because commonly it is written "in dorso," and upon the backe of the summondes, "Leg. Forest. c. 25." and be the practik and daylie consuetude of this realme zit observed, the execution of all brieves before inferiour judges, and of all criminall summondes before the three Estaites in Parliament, are verified in judgment be the record of the executor their of, and twa witnesses at the least. And in auld times the serjandes, or maires, maid the record of the summondes be word or be writ, as they pleased, and verified the samin as said is. And until the samin were done, the defender could nocht be compelled to make ane answer. "Lib. 1. c. cum autem. 8. de judic. c. 50." And King David the Second, 18. Febr. 1369, and of his reigne the fourtie zeire, statute and ordained, annent the record of serjandes or maires, that the summons and record their of sal be put in wreit gif it please the serjand, or mair, and he sal reade the samin gif he can in plaine court, utherwaies he may make the record be worde in the best form he may; and gif he failzies, he may be helped and supplied be interrogatours of the judge, concerning all and sundrie clauses or artickles necessarlie used in the record of an summondes, quhilk record the serjeand or mair sall prieve sufficientlie be lauch-

ful witnes. And the said record being swa maid, the samin sal be receaved as lauchfull, and the contrair partie sall nocht be heard to object against the samin, or to propone ony exception against the lauchfulness theirow: And it sall be leisum to the schireffe, his depute, serjand, mair of fie, or ony uther depute serving in the office of ane serjand or mair, be the authoritie of the King, or of onie uther having power, to make rehearsall of the summondes of the record or indorsation theirow, swa that they be qualified and abill to doe the samin. Ja. I. p. 9. c. 112.

Item, "*recordum curiæ*," signifies the report, rehearsall, or minute of that quhilk is done in courte, or the interloquutor of the courte, lib. 1. c. contingit, 31. Quo attach. c. nullus sectator, 20. In the Normand law, "lib. 9. c. Rollment of 31, vid. Sectator vid. Varda," quhilk in auld times was nocht written in courte. buiks, bot inrolled togidder in paper. Like as the Kinges rolles are zit written in parchment in the Checker: Therefore they are called the rollment of court. As the Kinges rolles or "*rotuli*," and the Clerke of Registrar, "*clericus rotulorum*," in Latin properlie "*volumina, quia involvuntur, et in se quasi retorquentur*." And it is to wit that actiones and pleyes are aither directlie and from the beginning persewed in ane court, or they cum fra an inferiour court to ane superiour, "*per translationem*, lib. 3. c. *præterea*, 16," as quhen ane pley or cause is advocat from ane inferiour judge to ane superiour; quhilks advocations ar permitted and leisum to be maid to the Kinges court allanerlie, be the auld law of this realme, sik as the justice courte, or schiref courte, and now, be the practik used and observed, to Lords of Session, and College of Justice. And swa because he quha alleged that wrang was done to him in the inferiour courte, raised the record or interloquutor pronounced against him, and summond the judge to compeire before the Kingis Justice or Schireff, to heare and see him decerned to have done wrang. Therefore "*sola curia domini regis, dicitur habere recordum, h. e. potestatem cognoscendi de re cordiis et interloquutoriis, quæ transferuntur ab inferiore curia, ad superiorem*." Albeit ilk lauchfull court, sik as ane barrone court, hes their awin recordes in all sik actiones as are intented and decided before them, and nocht advocate to ane superiour judge.

REGRATERIS, "*leg. burg. c. regratarii, 70*." Quha byis onie merchandise or other thing, and takis unlesumlie greater price for the samin afterward, as is expounded be Ja. 2. p. 6. c. 23, 24. Ja. 6. p. 12. c. 148. In the civil, regrateris are called "*dardanarii qui emunt, ut possint postea pluris vendere*." Dardanarii, "*dere, l. annonam, 6. de var. et extraord. crim. A quodam dardano, qui annonam flagellabat. Alciat. lib. 4. de verborum significatione*." And swa regrateris are so called be reason of the augmentation and hitching of the prices. Forestallares are properlie they quha pre-occupies and byes merchandes before it cume to the mercat, or to the stall, or place quhair it suld be sauld, or the time of day statute and ordained thereto. Ja. 5. p. 4. c. 20.

And mairover it is statute, that na man dwelland within burgh, or without the samin, sall upon the faire daie bye onie thing outwith the portes of the burgh, leg. burg. c. "nullus, 75." And likewaies na person suld bye fish, flesh, victuall, or onie uther thing, before mercat day, or the ringing of the bell **Forestallers.** in the steipell. "Stat. gild. c. 29." And mairover, forestallers are challenged and accused because they sell their gudes, and payis nocht the Kingis custame; that they sell their gudes privatlie upon their awin fluire; that they are fore-byars of quheat, beare, aits, cattel, and are coperis and sellers thereof, turnand the samin in merchandice, "leg. burg. c. de modo calumniandi" "foristallatores, 134."

RELIEVIUM, ane French worde, from the Latin "relevare," quhilk is to relieve or take up that quhilk is fallen; for it is given be the tennent or vassall, being of perfite age, after the expiring of the warde to his overlord, of quhome he halde his landes be knicht service, that is be warde and relieve; and be payment thereof he relievis, and, as it were, raisis up againe his landes, after that they were fallen downe in his superiours handes, be reason of waird, "lib. 2. c. dicitur autem, 72. leg. Forest. c. si quis Comes, 73. de "judic. 65." And the profites of the landes of the zeire foresaid, after the end of the waird, quhilk suld be given in name of relieve, are understande to be the retoured maill of the saides landes, conforme to the new extent thereof. And therefore gif there be bot onelie wairde, and the aire enter before ane terme run thereafter, the King or uther superiour suld have na relieve, "quia "hærede ad ætate perveniente, et facta ei hæreditatis restitutione, quietus "erit a relevia, ratione custodiæ, lib. 2. c. tandem, 70." Be the auld lawe and consuetude of this realme, the superiour might nocht be compelled after the waird to restore the landes to his vassall untill he had been first satisfied for the relieve; because he had libertie to reteine the landes untill the said satisfaction were maid, "Stat. Rob. III. c. nota quod iste, 21." Or else it was leisum to him, as he pleased, to poynd the ground therefor, "quia "dominus potest distringere tenentes suos pro suo relevio, et servitio de "feudo suo, sibi debito, li. 2. c. Sunt quidam, 73." But now, be the common practique, the non-payment of the relieve is na lauchful excusation to the superiour anent the receiving of his vassall; but he will be compelled, be precepts of the Chancellarie, to receive his tennente, or else he tynis the superioritie induring his lifetime. And it is leasum to him to poynd the ground for payment of the relieve. "Quia relevium est debitum reale, et "adhæret fundo." The beginning, and the first institution of the warde and relieve, was in the time of Malcolme the Seconde, called Malcolme Mac-Kenneth, quha gave all and haill the landes of this realme to the inhabitants thereof, and reserved naething to himsele in propertie, but onelie his royal power, and the mute hill of Scone, quhair he suld hald court, and receive homage and fealtie of his vassalls; in recompensation quhair of, all the baronnes gave unto him the warde and relieve of the aire of ilk baronne for

his princely sustentation. In the English lawes read in Magna Carta, anno 9. Hen. III. cap. 2. And the statutes of wardes and relieves maid be King Edward the First, 18. zeir of his reign.

REPLEGIARE, to replege, that is, quhen ony man, be vertue of his awin jurisdiction, bringis back again, or reduces to his awin court his awin man, fra ony uther mannis court, and leavis ane plege or cautioner behind him for administration of justice. Vid. "Culrach." It is not leasum to ony man to replege fra ony uther court ony person bot his awin liege man, or halding land of him, or remainand in his service as ane of his family or consanguinitie. "Stat. Alex. c. Anno 4. Statut. 2. Rob. Br. cap. 11. Ass. reg. Da. c. "Statuit, 37."

RESEANTISA, Lib. 1. c. Essoniorum, 10. Ane seiknesse and infirmitie, quhairby ony man is heavily vexed. "Essonium de Reseantisa, idem valet Essonium de "quod excusatio, de malo lecti," Bedde evill. "Cum quis morbo ita affligitur, ut sit lecto affixus." In French, "Mal. de Lit. stat. 1. Rob. Br. c. 5." In the law of Normandi, Lib. 9. c. 10, "Essoinzie," or excusation of "mal- "reseant," is quhen ony person lyand bed fast in his awin house, or ony uther place, is heavily vexed with sicknesse, that he may not travell without danger of his life. "In jure civili morbus Sonticus dicitur, qui cujusque rei Morbus "agendæ impedimento est, veluti febris: Et legitimam excusationem ac dila- Sonticus. "tionem præbet. L. Quæsitum, 60. ff. de re Judic. Aulus Gellius, Lib. 20. "cap. 1, appellat Morbum Sonticum, quemlibet morbum vehementiorem, "vim graviter nocendi habentem."

RESPONDE, or the buike of Responde. Ja. VI. par. 11. c. 73. It is maid and written be the Directour of the Chancellarie. For quhen he directis preceptes to the schireffe to give sasine of ony landes retoured before him to the Chancellarie, he makis ane memoriall of the dait of ilk precept, and dewtie of the landis, and commands the schireffe to take securitie for the samin during the time of the warde and nan-entres, and of the relieve aucht- and to the King gif the lands be halden be service of warde and relieve: Or of the doubling of the few-ferme, or of the blench-ferme, according to the halding of the landes. Quhilk buike zeirlie is presented to the Checker. And ilk schireffe, and other judges, givers of saisinges upon preceptes direct furth of the Kingis Chancellarie, are charged therewith in their comptes, compelled to make aunswere thereto, and payment of all sums contained therein: for the quhilk cause it is called "responde," quhilk is the first worde of ilke artickle of the said buike. Further, in the ende of the saidis preceptes, it is said, "præsentibus post proximum terminum minime valituris." And, theirefore, gif the obtainer of the precept furth of the Chancellarie lye out and take nocht saising upon the samin, quhil ane terme and mae be by-run after the date thereof, he suld come again to the Chancellarie, and

raise ane new precept; quhairin is augmented the by-run mailles of the land sen the dait of the first precept, and ane new memorial or "responde" is maide thereof.

RETOUR, quhom be it is maid, and why it is sa called, Vid. "Breve de morte antecessoris."

REGRES, from "Regrediendo," like as

REVERSION, a revertendo; for like as the buyar of landes lettes them returne to the seller thereof, be the reversion given unto him, even swa be the regresse of the superiour of landes, wad-set be his vassall, after the redemption thereof, suffers the first seller of the samin to come back again to his awin place, anent the halding of them as he did before the said alienation. Swa reversion and regresse are different, for reversion is given be him quha buyis the lande, "cum pacto de retro vendendo," to the annalier thereof.

Reachept. In French it is called "jus reacheptus," or reachept." And ane regresse is given be the superiour of landes to the annalier thereof, quhairby he promisis to receive again him or his aires to be his vassalles as they were of before, quhen it sall happen ony of them to redeem the saids lands. 27.

November 1567. George Halyburton, contrare the Laird of Haltoun. And gif ony man annalies landes under reversion, to be halden of him and his heirs, ane regresse is not necessar; for they being afterward redeemed, he quha first annalied them recovers the property theirow, without ony new saising, and the same returnis to him, and is consolidat with the superioritie quhilk he reserved to him and his heirs the time of the alienation. Bot gif

Landes annalied to be halden of the annalier and his aires.

Landes annalied to be halden of the superiour.

ane man annalies landes to ane uther, under reversion to be halden of the superiour, and the buyar thereof obtaine infestment and sasing halden of him, the annalier thereby is denuded of the propertie, and alsua is na langer vassall to his former superioure, and can na waies recover his former estait but be redemption of the landes, conforme to the reversion granted be him quha bought them; and alsua be ane regresse given him be the superiour: In the quhilk cause it is necessare to him quha first annalied the landes, and thereafter redeemed them, to take newe saising, to the effect the propertie quhilk was first annalied may returne to the seller; and that he may hald the samin landes in chief of his superiour and his aires, as he did before the alienation. And it is generally to be observed, that quhaire ane regresse is required, ane new saising is necessare. In auld times the reversion was contained in the chartour, as is manifest be divers chartours zit extant in the register, given in the time of King David the Second, containand the tenour of the reversion after the clause "Tenet. et habent." and uthers aulde chartours, in the ferme after following:

" OMNIBUS hoc scriptum visuris vel auditoris, I. dominus de A. Salutem Ane forme
 " in domino. Noveritis me concessisse, impignorasse, et ad immobile vadium of chartour
 " dimisisse, et hoc presenti scripto meo confirmasse, nobili viro V. de F. ane rever-
 " omnes terras meas de A. cum pertinentiis, in baronia de C. infra vice- sion.
 " comitatum de B. pro viginti Marcis usualis monetæ Scotticæ, mihi per præ-
 " dictum V. tempore confectionis præsentium, ad opus meum valde neces-
 " sarium gratanter mutuatis, et in usus meos conversis, tenent. et habent.
 " præfato V. hæredibus suis et assignatis, a me, hæredibus meis et assignatis,
 " in feodo et hæreditate, cum omnibus commoditatibus, libertatibus, et asia-
 " mentis ac jastis pertinentiis quibuscunq. adeo libere, et quiete, plenarie,
 " et honorifice, bene, et in pace; sicut ego vel prædecessores mei præfatas
 " terras cum pertinentiis liberius aut quietius tenui, aut possedi, tenuerunt,
 " aut possederunt, aliquo tempore præterito. Et semper quousq. ego præ-
 " dictus I. hæredis mei, vel mei assignati viginti marcas præfatæ monetæ,
 " prædicto V. hæredibus suis, vel suis assignatis, in uno die inter solis ortum
 " et occasum ejusdem, apud Abirdene in Ecclesia parochiali ejusdem; super-
 " magnum altare, simul et semel, persolvero, vel persolverint sine fraude;
 " fructibus, firmis, vel quibuscunq. aliis commoditatibus seu emolumentis
 " medio tempore per prædictum V. hæredes suos vel assignatos, perceptis
 " vel percepiendis, levatis vel levandis, indicta summa viginti marcarum, aut
 " ejus solutione, nullatenus computandis. Quia dedi, contessi, et assignavi
 " præfato V. hæredibus suis, et assignatis, omnes præfatas firmas, fructus,
 " et alias commoditates quascunque, et emolumenta de dictis terris cum
 " pertinentiis, provenient, toto tempore, quo prædictæ viginti Marcae (ut
 " præmittitur) non fuerint persolutæ; ex mea libera donatione, et pura
 " voluntate, pro suis consiliis, auxiliis, et gratitudinibus, multipliciter mihi
 " factis et impensis. In quibusquidem terris cum pertinent. præfato V.
 " tradidi saisinam et possessionem corporalem sibi, hæredibus suis, et assigna-
 " tis, juxta tenorem præsentis scripti remansuram. Ego vero prædictus
 " I. hæredis mei et assignati, totas terras prædictas de A. cum pertinent
 " præfato V. hæredibus suis et assignatis, juxta vim, tenorem et effectum
 " præsentis scripti, in omnibus et per omnia, contra omnes mortales var-
 " rantizabimus, acquietabimus, et defendemus. In cujus rei testimonium,
 " huic præsentis scripto meo sigillum meum apposui, et propter majorem
 " rei evidentiam, sigillum Andreae Giffard, tunc aldermanni de Abirdene,
 " præsentibus apponi procuravi. Apud Abirdene, 23. Augusti. Anno Do-
 " mini 1419. Testibus Laurentio de Abernethie, Domino de Rothemay,
 " Domino Wilhelmo de Lundoris, vicario de Abirkerdour, cum multis aliis ad
 " præmissa specialiter vocatis." But now the chartour is given be the sellar
 of the lands, and the reversion be the buyar thereof, severally sealed and
 subscribed be them, and the buyer keepis the chartour, and the annalier
 keepis the reversion. Quhilk forme appears to have the beginning in the
 dayes of King James the Third, quha in his actes of Parliament, p. 5. 20:
 November, cap. 27. callis the buying and selling of landes be chartour and

raising, and taking again of reversions, ane new invention; and for the mair securitie, ordainis all reversions to be registrate. Vid. Sterlingus. Vid. Vadium.

S

SCACCARIUM, the Checker, in French "Eschequier," the place quhair the Kingis rentes and patrimonie, alsweill propertie as casualties, is inbrocht, compted, and received, and the profitis of all landes fallen in the King's handes be reasone of warde. "Lib. 2. cap. Si vero dominus, 46." Some callis it the soveraigne and supream court, in the quhilk all causis and actiones are decided in the seconde instance, speciallie in the cuntrie of Normandie; for it is written in the lawe of Normandie, "Lib. 15. c. 1. in fine," that Philippus Pulcher did institute twa parliaments in Paris, and twa checkers in Roan. Paulus Æmilius writes Scaccarium to be as it were "Statarium, quod homines ibi in jure sistantur, vel quod sit Stataria perennis curia, cum caeterae curiae essent indictivae, nec loco, nec tempore statae;" as writes Budaeus in "Annotationibus in Pandectas." Be reason, as said is, the checker was ane certaine stable courte, and nocht doambulatoure, or runnand fra time to time, or fra ane place to ane uther, as the Session of this realme was before King James the Fifth. "Qui instituit Statariam curiam, cum antea esset indictiva;" be reason it did sit thrise in the zeire, quhair and quhen it pleased the King. Uthers thinkis that "Scaccarium is so called "a similitudine ludi Scacchorum;" that is, the pleye of the Chesse; because mony persones convenis in the checker to pleye their causes contrare uthers as gif they were fechtand in ane arrayed battell, quhilk is the forme and ordour of the said playe. "Jus Normand. Lib. 15. cap. 1. in fine." Uthers alleadgis, that it cummis fra an auld Saxon worde, "Scata," as writis D. Thomas Smith; quhilk signifies treasure, taxation, or imposte, quhairof, and of uther casualties, compt and reckoning is maid in the checker. Quhilk compte (like as all uther comptes) is maid in sik sorte and forme that "tabulae accepti," that is, the charge, and "tabulae expensi," that is, the discharge, are equal, and "sic aequae," because the comptar hes given furth na mair nor he hes received, and als wa hes given als meikle furth as he hes received. Quhilk is called "pariare rationes," and this comptar is called pariator, l. ult. § idem. "quesit de conduct. indeb. l. penult. § conductore de jure immunitat." Or els the charge and discharge are inequal, in sik maner that the comptar hes received mair nor he hes expended, and sa at the fute of the compt he is found restand and awand certain sums up taken be him, and not given furth, quhilk is "reliquare rationes," and this comptar is called "reliquotar," and is oblished, "reliqua inferre," to pay the rest auchtand be him, "l. creditor, 102.

Scata.

Pariare rationes.
Pariatur.

Reliquare rationes.

" § Valerius de solutionibus." Or, thirdly, " tabulae expensi superant tabulas accepti," quhen the comptur has given furth mair nor he hes received, and swa is superexpended, quhilk is called, " prosdapannan, h. e. supererogare, " vel superare rationes seu tabulas accepti." And the comptur quha makis sik ane compt is called " prosdapanetes, superogator." Quhilk word is used in the Evangell of St Luke, c. 10. 35. quhair the Samaritane haveand pittie and compassion upon the man quha betwixt Jerusalem and Jerico was spulzied, and wounded be thieves and robbers, did commit him to be cured be the hoste of his ludging, and gave him twa pennies, and promised to recompense quhatsumever he spendet mair, Vid. " Ballivus." Superare rationes.

SACREBORGH, or rather " Sickerborgh, securus plegius," ane sicker, sure, sufficient cautioner, " quo. attach. in prin. Ja. II. p. 14. c. 75." is ane maner of borgh or caution, quhilk ane findis to ane uther, and speciallie in actiones or pleyes; for quhen onie man hes action to an uther for theft or slaughter, quhair of he offers to accuse him judicially, it behuiffes the persewer to nit and oblisch him in the hands of ane officiar, before ane judge competent, and find sure caution and sicker borgh that he sall persew in form of law, " Mod. ten. cur. c. 44. lib. 4. c. 1. Stat. Alex. c. 9. c. si quis conquestus. 10." In the civil law, the accuser in criminall causes " cogitur inscribere nomen, l. 3. ff. de accusat." And conforme to the practick and law of this realme, the persewer, quhan he raises the letters, findes caution to report the samin again, dewlie execut and indorsat; and also to persew at ane certaine daie, conforme to tenour of the letters. And moreover, quhen he accuses ane uther criminallie, before the justice and his deputes, he suld sweare the dittay to be trew quhairupon he accusis the defender; bot the King's advocat, accusand criminally ony of the Kingis lieges, is na waies oblischid to sweir in this case.

SAK, Lib. 1. c. 3. In sum auld buikes it is called " placitum et emenda de transgressionem hominum in curia nostra." In the Britton lawes of King Edward it is written " Sacha, est si quilibet aliquem nominatim de aliquo calumniatus fuerit, et ille negaverit, forisfactura probationis vel negationis (si evenerit) sua erit." Quhilk may be called the unlaw or amercement paid be him quha denies that thing quhilk is proven against him to be trew, or affirmis that thing quhair of the contrar is of veritie. Sacha.

SAISINA, ane French word, saising or possession. V. " Dissasina."

SCHAFFA sagittarum, ane schiefe of arrowes, conteining twentie-foure. Utherwaies called " Garba." Ane schiefe of irone containes sexteene gades, ane schiefe of steile containes fourteene gades. " Leg. navium," or schip lawes, c. 2. Garba.

SCHIREFF, ane principal ruler, or judge of ane certaine part of the realme. In Latine, "præses provinciae." Aluredus, in the confederation maid with Guntherus King of Denmark, divided England in "satrapias, centurias, et decurias," and called "satrapiam" ane schire, that is, ane cutting or section, as is written in the auld Britton lawes, verb. "centuria." Like as we say as ait, scheire cornes, or scheire grasse, or ane pair of scheires, quairwith claith is cutted. And swa ane schire or schireffdome is ane part of land, cutted and separate be certain meithes and marches from the rest, within the quhilk the schireff, as judge, dois justice, and pronounces decreites and doomes to all the inhabitants theirow. Quhilk is called "comitatus, provincia, vel vicecomitatus, lib. 3. c. tali autem, 18. lib. 4. c. si quis, 28. c. si quis in manibus, 42." Schireffs in this realme hes their offices given to them be the King in heritage, contrair to the act of Parliament, Ja. II. par. 11. c. 44. quhilk is the cause of great enormities and wranges, be reason the schireffs being infest heritable, thinkis themselves sure of their office, and regairdis nocht the execution theirow. And to the effect that gude men may make conscience of their calling, (quhair of they sall make compt and reckoning to God, of all evil committed, and of all gude omitted), and that uthers may be instructed of their dewtie, and ather mooved to doe the samin, or els be punished far neglecting theirow, I have collected and gathered furth of the lawes of this realme ane schort rehearsal and summe of all things perteing to the office of ane schireff: And, first, of persones, sik as schireffs deputes, clerks, and serjands. Secondlie, of schireff courtes. Thirddie, of his office and jurisdiction, quhilk generallie consists in observation and execution of all the Kingis lawes; and, particularlie, in particular actiones and pleyes perteing to his jurisdiction and court; quhair of sum are civil, uthers are criminall. And, last, of the paines and punishment of malicious or negligent schireffs.

Schireffs.

First, Shireffs suld be in all and sindrie partes throwout the hail realme, and speciallie in the north partes and west partes of the samin, sik as the North Iles and South Iles, for the acquieting of the peopill be justice, and in Rosse and Caithness, Ja. IV. par. 6. cap. 59. cap. 61. And to the effect they may the better exerce their office, and do justice to every person as effeirs, they suld be gude, sufficient, and qualified men, as is statute be King David II. 6. Novemb. 1357. In ilk schireffdome they suld do justice to the Kingis lieges, hauld courtes in lauchfull time, and continew the samin according to law, swa as that actiones and proces begun and intended before them sall na waies be delayed throw their negligence, fraud, or malice. "Stat, Rob. III. ex libro Sconensi," and suld doe justice and full law alsweil to puire as to rich, under all paid and charge that may follow, Ja. I. p. 2. c. 45. And, briefly, all schireffs and uther ordinar judges, their deputes, and clerkes, suld knaw and understand the lawes of this realme, and actes of Parliament, quhair of the execution is committed to their charge, quhilk they suld cause be execute without delay, Ja. VI. p. 12. c. 124; and suld not onlie be qualified in judgement and knowledge to minister justice, bot also

suld have sufficiently of their awin in landes, gudes, and gear, quhairin they may be punished, being found culpable in execution of their office. Ja. I. p.

1. c. 6. The schireff suld have for his fee of the escheittes ten pundce, "Leg. The schi-

"Mal. Mak. c. 1." Quhilk fee suld be payed to him of the extractes and refes fees, escheittes of his awin courte, and na urtherwise; but na fee suld be allowed to him untill first he make compt to the checker of his intromission. "As; "reg. Da. ex libro Sconensi." And under pretence of his fee he suld take nothing, nor use onie extortion upon them quha cummis to faires, parliament, or general counselles. Ja. III. par. 5. c. 33. Nor suld take na disgresse of gudes and gear of little price and quantitie, cummand to the fairen or mercattes. Alwayes he suld have the best oxe or cowe, or unriden horse, quhilks are stalled or brought to be sauld. James II. parl. 13. cap. 60.

All schireffs sall have gude and sufficient deutes or baillics, for quhom they sall answer. And gif ony persone be infest with sik office in auld time, and is unable or unapt to use and exerce the samin in his awin proper persone, he sall present to the King ane sufficient depute to exerce the said office in his place, for quhom he sall be answerable, as is statute be King Dav. II. 6. Novemb. 1357, quhilk is confirmed by Ja. I. p. 1. c. 6. And generallie it is trew, that ilk scheriff and uther ordinar judge sal be halden to answer for their deutes as themselves, Ja. III. p. 5. c. 26. And therefore all schireffs and judges, for their awin better securitie, sulde make their deutes, ane or mae, gude and wise substantial men, of best fame, knowledge, understanding, and experience, and least suspect within the schireffdome, and suld cause them be sworn the time of their admission, that they sall leally and truely use their office; and gif they continue them frae an zeir to ane uther, they sall cause them be zeirly sworne for administration of justice, at the head court after Michaelmas, Ja. V. p. 6. c. 73.

Schireff-
deutes,
and their
qualitie.

Shireff-clerkes suld be honest famous men, quha be themselves and their sufficient deutes sal be alwaies resident within the head burgh of the schire, for registration of letters of horning, and better execution of their office. Ja. VI. p. 6. c. 75. Be the auld law of this realme, the schireff-clerke was input and output be the King, and had na league nor bande with the schireff, but was bound and ablished to the King allanerlie, and was susteined in his Hienes house, as occasion and time required, and did all things concerning his office with the counsell and advice of the King. "Ass. reg. Da. "in libr. Sconensi."

The schireff-clerke receivis for his fee, of ilk amerciament or unlaw, twa shillings, Leg. Mal. Mak. c. 1. Gif he sall happen to be found culpable in execution of his office, and speciallie anent the registration of letters of horning, he suld be punished of all his gudes moveable, to be applied to the Kingis use; and the schireff sall pay for the fault of his clerke ane hundreth poundes.

Schireff-
clerkes.

to the King, and all damage and interesse of the partie grieved. Ja. VI. p. 11. c. 71.

Deputes and clerkes. Schireffs suld send their deputes and clerkes, ane or mae zeirlic, at the first day of November, to the Lordes of the Session, to be examined and admitted be them, under sik paines as the Lordes sall please to modifie in case of failzie, to be imployed to our Severaine Lordes use. Ja. VI. p. 11. c. 80. Ja. VI. 12. c. 124.

Serjand.

The schiriffes serjand, or officiar, suld have ane horne, and ane reide wand of three quarters of ane yairde lang at the least; and gif he have nocht the samin, he suld be challenged therefore be the schireff in head courtes, Ja. I. p. 6. c. 99. Quhair of the ane and the uther is necessar to him in the execution of his office; for with the sound or blast of the horne he denuncis the disobedient rebelles; and also persewis mafefactoures quha are fugitive fra the law, and raises the inhabitantes of the countrie to concur and assist in taking and apprehending of them. And with the wand he relaxes them quha returnis to the Kingis obedience fra the horne, and receives them to the Kingis peace, as I have said already in an uther place. Likewaies, all schireffes, stewarts, and baillies, sall cause the maires, serjands, and officiers, have ane signet containand the first letter of their name, quhairwith all letters and precepts extant be them, and indorsations thereof, sal be marked and stamped, Ja. V. p. 6. c. 74. The schireffes serjand suld have for his fee, of ilk amerciament or unlaw of court, an colpindach, or threttie pennies. "Leg. Malc. Mack. c. 1."

Schireffes courte.

It is lesum and necessar to the schireff and his deputes to halde schireff courtes for execution of his office. Quhilks courtes ilk schireff, be the auld law of this realme, is oblished to hald after the space of ilk fourtie daies. "Lib. 4. cap. Statutum, 19. ass. reg. Dav. c. ad summonitiones, 19." And now all schireffes, stewartes, and baillies, suld hald three head courtes in the zeire, be themselves in proper persone, except they have just and lauchfull excuses of seiknes, or of the Kingis service. And all barrones and free halders, quha aw suit and presence in the saides courtes, sall compeir personallie. And the absentes suld be amerciat; and all they quha aw bot suit allanerlie, sall send their suittoures, honest and qualified men, able to decide onie actione or cause. And all they quha cummis to the courte, sall remain untill the samin be ended, and sall passe upon inquestes and assises, and assist the schireff doing their office and service, conforme to their infestments. Ja. V. p. 6. c. 71. The schireff in his court sall keipe and observe sik forme and ordour of process as is used before the Lordes of Councell and Session. And he suld set his court peremptourlie upon fifteen daies, and all precepts direct be him to summond and warne the parties, suld be execute upon fiftene daies. Ja. I. par. 19. cap. 130. Ja. V. par. 6. cap. 72. And gif the indwellers within the schireffdom, and royaltie thereof, compeiris nocht in sufficient number, or sendis nocht their attournayes, to passe upon serving of inqueists or retoures, swa that thereby the schireff-court is weake and

Sute and presence.

nocht weill stuffed, the schireff may warn the gentlemen of the regalitie to compeire and enforce his court, but prejudice of their regalitie. James I. par 9. cap. 130 Item, all barrons, knightes, freeholders, and stewards of bishoppes, of abbotes, and of earles, suld be present at the schireff-court, under the paine of the Kingis unlaw. "Lib. 4. c. statutum, 19. Ass. reg. Da. "c. ad summonitiones, 19." All the saides persones and uthers, quha comes to the court, suld come in sober and quiet maner, with als monie persones as they daylie susteine in house-hale and familie; and beand come to their ludgeing, they suld weare na weapones but their knife; and gif ony of them dreadis bodily harme of ane uther, the schireff suld grant him law burrowes, Ja. II. p. 14. c. 83; and it is leasum to the schireff to charge all persones to cum to his court in sober maner, and gif they refuse to skaill their gadderinges and convocation, he may stay or continue the court; and the persones disobedient sal be punished be warding of their personnes be the space of ane zeire, and be payment of the expensis and damage susteined be the parties throw delaie of justice. Ja. III. p. 14. c. 104 And albeit all freeholders and uthers persones suld cum to court in quiet maner, as said is, nevertheless it is leasum to the schireff, stewart bailly, and uthers the Kingis officiars, to ride with great number for execution of justice, and furth setting of the Kingis authoritie. Ja. V. p. 4. c. 27. The unlaw of the schireff in his court suld not excede the summe of 16 schillinges, and to his clerke 2 schillinges, and to his serjand an colpindach, or 30 pennies, "Leg. Malc. Mack. c. 2." The unlaw of courte.

The jurisdiction of the schireff consistis and standis generallie in diverse and sindrie pointes. But first of all it is to wit, that the schireff, his depute, and serjand, hes na jurisdiction or power outwith the boundes of his awin schireffdom, to sumand or attache ony person, or to poynd or take ane destres of onie mans gudes and geare; for they suld mak faith that they sall faithfullie serve the King within their awin schireffdom, and sall nocht trouble or molest onie person within the samin, against law or reason. "Ass. reg. Da. "c. nullus. 13. quo. attach. c. nullus. 57." Swa it is manifest, that the schireff has only jurisdiction within his awin schireffdome. Within the quhilk, he and his deputies suld cause the lawes and actes of parliament to be published, read, and proclaimed in his courtes, and to be keiped and observed be all our Soverain Lordis lieges, alsweil in the courtes of all prelates, erles, barrones, and uthers havand power to hald court, as in his awin schireff court, and suld give to them the copie of the lawes, that na man pretend justlie ignorance thereof. "Stat. 2. Rob. c. Robertus, 28." And siklike in all burrowes of this realm, the schireff shall cause 12 leil and honest men of the burgh sweare and make faith that they sall cause the Kingis lawes be keiped and observed. "Stat. Alex. c. Item, in omni." and to the effect the samin may be the better done be him, the actes of Parliament being registrat, suld be delivered be the clerke of the register to him; quhilk he sall cause be proclaimed openlie in chiefe places of the schireffdome, and suld give copies of

Jurisdiction. The schireff hes na jurisdiction outwith his awin territorie.

The schireff suld cause the lawes be proclaimed and observed.

them to prelates, barrons, and burrowes within his schireffdome, upon the expences of the asker, and suld cause all indwellers within his schireffdome baith to land and to burgh, to keipe and observe the said lawes and statutes, under the paine of deprivation of his office. "Ja. 1. p. 3. c. 67. Ja. 2. pr. 14, c. 90." And likewaies to the effect the schireff suld see justice lauchfullie done and ministred, he suld be present in al courtes of bishoppes, abbots, earls, barrones, and frieholders, to quhom it is not leasum to hald their courtes, except the schireff or his deutes be present, or summoned to that effect, "Lib. 4. c. die lunae, 14. Stat. Alex. assissa 10. Ass. reg. Da. c. 1." And siklike, na barrone may hald courte of battell, water, or iron, except the schireff or his deutes be present to see justice done. "Stat. Alex. c. praeterea. 28 vide "Duellum, vide Mahamium." And mair over, the schireff and all uther judges suld repair within the schireffdome, suld repair and cum to the King, the first night he to the King. cummis within the schireffdome, to answer to all complaintes made against him, anent the nocht keiping and observation of the lawes; and sall nocht departe nor passe away without licence asked and obteneid, under the paine and unlaw of aucht kye, "Ass. reg. Da. c. statutum. 20. quo. attach. c. statutum. 80." And also sall nocht passe awaie fra the King, except he have with him the actes of Parliament, and his instructions given to him in writ. "Ass. reg. Da. ex libro Sconensi." Last, concerning the execution and observation of the lawes, the schire, nor na uther officiar of the law, sall onie waies obey or execute onie command direct to them be the King, under the great seale, privie seale, or signet, repugnant or contrarious to law or reasons. Bot gif onie sik precept be presented to them, they sall receive the samin reverentlie, write upon the back thereof, and remit the samin againe. "Rob. 2. 1372," and of his reigne the first zeire.

The schireff
suld repair
to the King.

He suld not
execute or
obey un-
lauchfull
commandes.

The schireff suld nocht onlie make the publication of the lawes, and cause the samin to be keiped and observed; bot also suld concur and assist with uthers to do the samin, sik as the justice generale, chalmerlane, and auditours of our Sovereine Lordes Checker.

The schireffs
office
in the justice
aire.

The schireff, at command of the justice generale, suld summond certaine persones to burgh and to land, to give upon dittay to the justice clearkes, and suld be present in proper person at the justice aire with the verification of the saides summonds. He suld susteine and pay the expences of the justice clearkes, in the time of the taking up of the dittay, quhilk suld be allowed to him in his comptes. He suld (conforme to the justice precept direct to him) summond al bishops, abbotes, erles, barrones, freeholders, and al uthers quha aucht presence to the justice aire, and are immediate vassals to the King, to compeir in the justice court, to fortifie and assist the justice. Likewise he suld summond al persones indyted of new and of aulde, al pledges oblished for the entrie of onie man in the aire, all persones quha will persew or defende in the said court, to compeir, doe, and fulfill that quhilk accordis of the lawe. He suld be presente in the courte, with sufficient testimonie of the execution of the said summondes. And suld make provisione for the

justice and his clerkes, quhilk suld be allowed to him in his first compte in the Checker. He suld take up sik summes of money, and gif neede beis, poynd therefor, as the justice modifies, to be payed be them quha are amerciat, or cummis in will. Vide "Iter."

Mairover, gif there be onie persones quhom the crowner may nocht, nor dare nocht arreist, he sall deliver their names to the schireff, quha sall becom borgh and cautioner to enter and present them in the justice aire, or sall passe or send sufficient number of men, to fortifie the crowner making the arriestmente, and bringing the persoun arriested to the schireff to be kept be him; quhilk, gif the schireff failzie to doe, he sall pay ten pound to the King. James III. par. 14. cap. 99. Because the schireff suld keep the persones arreisted be the crowner, and enter them to the justice aire, gif their be na castell perteing to the King within the schireffdome quhairin they may be kept, James V. p. 3. cap. 5.

Mairover, the schireffe or his deutes suld passe, or send with the crowner, and visie the gudes perteing to all persones convict in the justice aire, and deliver to the crowner sa meikle thereof as he suld have be the law, and inbring the remnant to the thesaurer. James III. par. 14. cap. 102. And the last day of the aire the schireff suld thoill an assise anent the using and execution of his office. James III. par. 14. cap. 102. Finallie, the schireffe or his deutes, be their clerke, suld inbring to the thesaurar all extractes of the justice aire, and summes of money contened thereintill, quhilk gif hee failzie to do, na allowance sall be granted to him in the Checker of his comptes, albeit hee have the kingis letter in the contrare, granted to him in his favoures. "Ass. reg. Da. ex libro sconensi."

Quhen the chalmerlaine is to hald his aire within onie burgh, the schireffe, be virtue of the chalmerlaines precept direct to him, suld attach and arreist without delaie, under sure pledges and cautioners, all them quhais names the provest and baillies of the burgh sall give to him in writ, to compeire before the chalmerlaine or his deutes, day, place, and time of the aire, to answer to sik things as sall be laid to their charge. At the quhilk court and aire the schireff and his deutes suld be present, bringand with them the said precept, and verification or testimonie of the execution thereof. "Iter. "camer. c. 2."

Chalmer-
laine aire.

All schireffs suld be examined zeirlie in ilk checker, how they have keiped the acts of Parliament, and how they have punished the transgressoures thereof. For in the Checker, the schireff, or ane sufficient depute for him, Checker, haveand sufficient power, suld compeire and swear thereanent in "animam eius," under the paine of ten pound, and tinsall of his office at the Kingis will. "Ass. reg. Da. ex libro Sconensi." In the quhilk Checker, the scheriffe suld make compt, and full paymente, "aeq," with the rolles, sa far as he has intrometted, or micht intromet with the Kingis propertie or casualities, sik as escheits and wardes, under the paine of warding of his persone. James V. parl. 7. cap. 96. James VI. parl. 11. cap. 74. And suld bring with him

his court buikes, with the compt of escheats, and unlaues, intrōmetted with be him, togidder with the registers of hornings registrate be him in his buikes, and of all saisinges. James VI. parl. 12. cap. 124. And suld find cautioners, burges men within Edinburgh, acted in the buikes of Councell, that he sall zeirlie make compt in the Checquer, and payment of all things intrōmetted with be him. Ja. VI. p. 11. c. 80. James VI. par. 14. cap. 230. And gif he be found restand at the sute of his compt onie summes of silver, to the King or his thesaurer, it is leasum to the thesaurer, as he pleasis, to poynd the schireffe and his deputes, or the parties to quhome saising is given for the saidis summes, conforme to the buike of "responde." Ja. VI. p. 11. c. 73.

The schi-
reffs juris-
diction in
civil maters.

The jurisdiction and office of the schireff consists alsua in particular civill actions and pleyes, and decision theirow in his courte, and likewaies in execution of decreitis given be civill judges, sik as the Lords of Councell and Session. The schireff and his deputes is judge competente to their pleyes and actiones after following: That is, the pley or mute of barrones betuixt barron and barron. The mute of ane reasonable terce pertaining to wemen as lauchfull wives, be reason of the decease of their husbandes, complaints tuiching the breaking of appoyntments, aggreances, and end of pleyes made in court, and not keiped. "Lib. 1. c. 4. c. contingit. 31. lib. 2. c. dos. 19." Mutes and pleyes of natives, that is, of boundes and servandes fugitive fra their awn maisters; making of homage; receiving of relives; alsua actiones and pleyes of debt aughtand be an to ane uther, may be followed before the schireff, with uther actiones of wrang and unlaw, "lib. 1. c. 4. lib. 2. c. consequenter, 13." The brieve of richt, and free tenements suld be determined before the schireff, in the second instance, quhairas complaint is made, that the court of barrones hes done wrang thereanent, be reason wranges done in the barron court war remeded in the schireff court be the auld law of this reaime. "Lib. 1. c. placita. 6. Lib. 3. c. solent, 17. c. ad vicecomites, 17." Bot be the law and practick now used and observed, the Lordes of Councell and Session are onelie judges competent baith in the first instance, and second, to all actiones and matters tuiching fee and heritage. Siklike all pleyes tuiching meithes and marches of lands, betuixt nightbour and nightbour, suld be decided and declared be ane assise before the schireff, "lib. 2. c. vlt." Conform to the quhilk all actiones of molestation, in trowblance of the possession of propertie and commontie, suld be decided be the schireff of the schire, or uther ordinar judge, quhair the landes lyes, be the determination of an assise, of the best and worthiest of the cuntrie, least suspect, and that best knawis the veritie. Ja. VI. p. 11. c. 42. The schireff is judge competent to the remooving of tennents fra landes, conforme to the warning maid against them to that effect, Mar. p. 6. c. 39. The schireff is judge to the brieve of inquest, quhairbe ane desiris to be served and retoured narrest and lauchfull aire to his predicessour. "Lib. 3. c. Generalia, 25. quo. attach. c. de brevibus, 31. Ja. I. p. 9. c. 127." Quhilk brieve suld

Molesta-
tion and
cognitions.

Removing.

Brieve of
inquest.

be served in plaine courte, be the maist worthie of the schireffdome, summoned and called upon the premonition of 15 dayes. "Stat. Rob. III. c. 1. "vide breve de morte antecessoris." And na commission for serving of the Commis- said brievè, or uthers, suld be granted to onie person in prejudice of the sions. schireff, stewart, or baillie, untill he be first warned to hear and see the samin given, or else to alleadge ane reasonable cause quhy the samin suld nocht be granted. Ja. V. par. 6. cap. 82. And in case ony sik brievè sal happen to be served and retoured before onie judge commissioner, the precept of saising suld be direct furth of the Chancellarie to the schireff, as is before said, "verbo. breve de morte antecessoris." For generallie all preceptes of saising Saisinges furth of the Chancellarie upon retoures suld be direct to the schireff, and upon pre- uthers judges ordinar, with the clause, "Capiendo securitatem." Ja. VI. p. cepts of the 12. c. 124. And all saisinges passing upon sik precepts suld be given be them, chancellarie, their deutes and clerkes. Mar. p. 6. c. 34. Quhairof they suld write the day and zier of the giving of ilk saising; and bring the samin togidder, with all uthers saisinges given be private noatares, zierly to the checker. Ja. IV. p. 6. c. 89. Ma. p. 6. c. 47. Ja. VI. p. 11. c. 65.

Sik like actiones of ejection and spuilzie perteinis to the schireff and his Ejectiones jurisdiction. And, therefore, gif ony man is wrangouslie ejected furth of his and spuilzie land, or violentlie spuilzied of his gudes and geare, the schireff suld take cognition thereanent. And the ejection or spuilzie beand proven, sall cause him quha is ejected or spuilzied to be restored to his awin landes, gudes and geare, with the profits thereof, and damage and skaith susteined be the partie. "Ass. Reg. Da. c. stat. 31." Specialle gif the persones quha ar ejected and spuilzied be religious men, clerkes, widdowes, aged persones, or sik uthers, quha be the law ar excused fra singular battell. "Ass. Reg. Da. c. stat. 38. "stat. Alex. c. 5. stat. Ro. Br. III. c. 6.

And in ejectiones, quhen ony man is ejected furth of his landes, fee, or Ejectiones heretage, the schireff, at command of the Lordes of Session, sall furthwith gar restor the ground, without prejudice of ony partie, and recognosce the landes in the Kinges handes, untill they be lowsed be the King. And in the mean time, inquisition is taken be the schireff, quha was lauchfull possessour of the landes; and the samin beand retoured to the King, the landes ar letten to borghie to the said persone. Ja. II. p. 14. c. 62. And generallie, the schireff suld arrest, and put in the Kinges ward, all maisterfull and wrangeous occupiers of uthers mennis landes, and sall cause the ground to be maid voyde of them and their gudes. Ja. II. p. 14. c. 78.

Concerning spuilzie, the schireff suld compell spuilziers and their receipters Spuilzie (the spuilzie being proven) to restore their gudes spuilzied, and charge them to answer therefor as law will. And in case they disobey, he suld denunce them rebelles, and put them to the Kinges horne. Quhairin gif he be negligent or partiall, he sal be punished as the principall spuilzier. Ja. II. parlia. 5. cap. 10. The like restitution suld be maid be the lordes of regalities; quhilk gif they doe not, the schireff suld cause the samin be done within the

regalitie. Ja. II. p. 5. c. 11. Last of all, actiones of recent spuilzie may be persewed before the Lordes, or the schireff, within 15 daies nixt after the committing of the spuilzie. Ja. IV. p. 6. c. 65.

**Execution
of decreetes.**

Execution not onely of decreetes of ejection and spuilzie, as said is, bot also of all uther decreetes, perteinis to the schireff, be reason of his office and jurisdiction. For ane decreet beand given against ony man, letters are direct to the schireff of the schire, steward, or baillies to burgh or to land, charging them to put the said decreete to execution; quhilk suld be done be ilk ane of them, within their awin jurisdiction, and suld receive for their office and fee xiid. for ilk li. recovered or contained in the decreet, to be taken of him against quhom the decreet is given. And gif the schireff or uther officiar failzies to do the same, he sal tine his office for iii. zeirs, gif it be heretable; and perpetually, gif he hes it in liferent, or for ane certaine time: and sal pay the principal sume recovered to the partie, with the costs and expenses sustained be him. Ja. IV. p. 3. c. 30.; Ja. IV. p. 6. c. 67. Likewise, all sentences and decreets given be the Lordes of the Session suld be execute be the schireff of the schire, or his deputes, quhair the party dwellis against quhom the decreete is given, or els be herauldes, pursevantes, or maisers; and for execution thereof, nane sall take mair nor is prescribed be the acte of Parliament foresaid, except be liberalitie of the partie, under the paine of deprivation of their office. Ja. V. p. 5. c. 58.

Poynding.

For the better and mair reddie execution of decreets, it is leasum to the schireff to poynd the gudes and geare pertaining to the debtour, be the brieve of distres, quhilk brieve perteinis to the schireffs jurisdiction. "Lib. 1. c. "Placitum, 7." Quha suld cause execute the forme of poynding and taking of distres. "Quoniam attach. c. de brevibus, 31." Bot the schireff or uther judge may not poynd ony man, or take ane distres, bot within his awin jurisdiction allanerly; and gif he dois in the contrair, it is plaine reife or spuilzie. "Stat. Rob. III. c. Item, stat. 13." And it is leasum to the schireff, or ony uther judge, within his awin jurisdiction, to poynd oxen, horse, or uther gudes pertaining to the pleuch, or that labouris the ground the time of the labouring thereof, gif there be uther streinzieable gudes quhilk may be poynded. And gif ony man will take ane poynd within the schireffdome, he sall cum to the schireff, or his deputes, and desire him to concurr and assist with him thereintill. And thereafter the schireff, or his deputes, sall passe with him to the house of the debtour, fra quhome the poynd suld be taken. And gif the debtour confessis the debt, and prievis payment thereof to be maid be him, or be uthers in his name, na poynd suld be taken. And gif ony is taken, the samin suld be delivered again; utherwaies, gif he grantis the debt, and proovis it not payed, the schireff suld take the poynd, and cause the creditor be payed. And gif the debtor denyis the debt, the poynd sall not be taken fra him, except it be manifest that the debt is auchtand to the creditor; because na distres or poynd suld be taken bot for debt confessed or proven. "Lib. 4. c. Si quis names, 30." And gif the

debtor hes na moveable gudes, or hes not sameikle within the schire as is equivalent to the debt recovered against him ; and gif it happenis that he have some moveable gudes within ane uther schireffdome ; the schireff of the uther schire, within the quhilk the saids movable gudes lyis, sall cause the samin to be poynded and comprised, and the creditor to be payed. And fail- zicing of moveable gudes, the schireff sal cause the landes and immoveable gudes pertaining to the debtour to be comprised, conforme to the acte of Par- liament, and cause the samin to be sauld and annalied to the availe of the debt and the creditour. Ja. II. p. 5. 36.

Diverse and sindrie criminal actiones perteinis and belangis to the schireff Criminal and his jurisdiction, quhair of some ar capitall ; uthers ar pecuniall, as after causes per- followis. And first, generallie, the schireff may follow and persew al trespas- teining to the schireff- soures in the Kinges name, and cause his maires and serjandes arreist them, albeit na partie persewer compeir or assist. Ja. I. p. 13. c. 139. Like as the thesaurar, and advocate, may persew slauchter, and uther crimes, albeit the parties keipe silence, or utherwaies privatlie agree. Ja. VI. p. 11. c. 76. And swa quhen ony complaint is maid be ony persone to the justice general, or to the schireff, or to ony uther officier of law within burgh, or without the samin, the schireff, or uther judge, sall summond baith parties. And gif the deede be done be Chaudmelle, the partie sall persew as effeiris of the law. Bot gif it be done be fore-thought fellonie, the committer thereof sall be ac- cused of the breaking of the Kinges peace ; he sall satisfie the partie, and be imprisoned in the Kinges prison ; because his life and gudes ar in the Kinges will. Ja. I. p. 3. c. 51. And gif ony trespassour be fugitive for ony crime, the schireff suld persew and follow him ; and ilk gentleman not followand the schowte, or out-horne, sal pay xs. and ilk zeaman xxs. to the King. Ja. I. p. 6. c. 9. 8.

The schireff, crowner, or provest within burgh, suld cause burie him quha is murdered. " Leg. Mal. Mak. c. 1."

The schireff suld punish witches, sorcerers, necromancers, and them quha Murther. seekis helpe, response, or consultation of them, unto the death, alsweill the Witchcraft ; abuser as the seeker of the response or consultation. Mar. p. 8. c. 78.

The schireffe, and uther ordinar judges, suld search, take, and apprehend all them quha, not being lauchfullie admitted, dois minister the Sacramentes, sayis Messe, or hearis the samin, to be brocht to the King to be punished Messe. conforme to the law. Ja. VI p. 1. c. 5.

The schireff suld take strait inquisition of them quha strikis false or False cuin- forbidden cuinzie, and suld cause them to be brought to the King, to be zic. punished to the death. Ja. III. p. 3. c. 18.

The schireff beand certified of slauchter committed within his schireff- Slauchter. dome, and royaltie thereof, he sall incontinent raise and follow the slayer with sound of horne, and convocation of the Kinges lieges. And gif he beis apprehended with reid hand, justice sall be done within that Sunne. And gif he be taken and apprehended without reid hand, hee sal be put in prison,

and law sal be done upon him within 40 daies. And gif he escapis, or flies furth of the schireffdome, the schireff sall certifie the next schireff thereof, quha sall persew and follow the slayer in maner foresaid. And consequentlie, ilk schireff sall certifie uther, untill the trespassour be put furth of the realme, or els brocht to justice. The like certification suld be maid be the schireff to the Lord of Regalitie, quha suld persew the malefactoures as the schireff suld do. Ja. I. p. 6. cap. 89 ; Ja. III. par. 5. c. 35. ; Ja. IV. par. 3. c. 28. Quhen the committer of slauchter cummis to the girthe, the schireff suld advertise the maister of the girth, and cause the slayer bee put to the knowledge of an assize, quhidder the slauchter committed be him was done upon suddaintie, or be fore-thought fellonie. And gif it be found suddaintie, he sal be restored to the libertie of the girthe and sanctuarie. And gif it be founde fore-thought fellonie, he sal be punished to the death. Ja. III. p. 5. c. 35. ; Ja. V. p. 4. c. 22.

**Law-bor
owes.**

The schireff suld not only punish committers of slauchter, as said is, bot also suld, after his power, stay and stop the committing thereof; and, therefore, quhen ony man hes doubt of his life, either be ony deede, menacing, or violent presumption, and verifies the samin be his aith, or uther probation, and for that cause askis law-sovertie to be given to him be the schireff, that he sal be harmeless and skaithless of him of quhom he dreads the bodielie harme, the schireff suld grant his petition; and gif he refusis the same, he sal pay 40 pound to the King, and assyith the partie. Ja. I. p. 9. c. 129. ; Ja. II. p. 6. 13. ; Ja. II. p. 14. c. 83. And gif the law-borrowes happenis to be broken, the paine thereof suld be payed to the schireff, for the quhilk he sal be comptable in the Checker. Ja. III. p. 1. c. 5.

Thieft.

It is leasum to the schireff, and his deputes, to persew ony persone for thieft, albeit no partie concur and informe him thereanent. "Quoniam at- tach. c. ubi aliquis, 25." As likewaies, he is judge competent to thieft and slauchter, quhen ony persone compearis and insistis with him in the persute. But gif the saidis crimes be followed be way of dittay, the justice generall is judge thereto. Lib. 1. c. 2. And quhen ony thief is condemned before the schireff, and execute for thieft, al the moveable gudes quhilk perteine to him, suld justlie perteine to the schireff. "Lib. 2. c. Forisfactum, 55. de "Judic. c. Præterea, 148." But gif ony man findis in ony town his awin silver stollen fra him, it is not leasum to him to intromet therewith; bot he suld put and leave the samin in the keiping and custodie of honest men of the towne, and sall declare the samin to the schireff, quha sall compell the provest, or ruler of the towne, and three men with him, to mak faith that he knawis nathing of that thieft; and thereafter the compleiner proovand the silver to be his awin, suld receive the samin to be used be him, as his awin proper gear. "Lib. 4. c. Si quis. 21. stat. Alex. c. Assisa. 20." All thieves suld be punished to the death. And it is not leasum to the schireff to sell ony thiefe, or to fine with him for thieft done, or to be done, under the paine of life and gudes. Ja. I. p. 13. c. 135.

All Sorners, taken and apprehended, suld be delivered to the Schireff, that Sorners justice might be done upon them as thieves and rieurs. Ja. II. p. 11. cap. 45. Ja. III. p. 10. cap. 77. The Schireff suld arriest and challenge all sorners quha lyis and sojournis upon the Kingis lieges, and compel them to assyth the King, and the partie compleinande. And gif na partie compleinis, he sall inquire at the head courte anent sik trespassoures. And as he ony findis, suld punish them. Ja. I. p. 1. c. 7. And mairover, the Schireff and all uther officiares, alsweill to burgh as to land, sall punish sorners, overlyars, maisterfull beggars, fuilles, bairdes, vagaboundes, put them in warde, and banish them the cuntrie. Ja. II. Parli. 6. cap. 22. And all oppressoures, strang vagaboundes, beggars wandring athort the realme, upon pretence that they are schipbroken, or banished for slauchter, or uther odious crimes, and dissimulat thieves, and abusers, called Ægyptians. Ja. VI. p. 12. c. 124.

Sick-like the Schireffe suld arreist all idle-men, and put them in sure fir-Idle-men mance, until it be knawin quhairon they live, and take caution of them, that the inhabitantes of the cuntrie sal be harmlesse and skaithlesse off them; and that they sall get maisters, or pass to craftes within fourtie daies; quhairin gif they failzie, the Schireff suld imprison them, untill they be punished at the Kingis will. Ja. I. p. 3. c. 66. Mair-over, the Schireff suld compell idle-men to passe and labour for wages within schippes, maid and prepared for fishing of great and small fish, under the paine of banishment furth of the schireffedome; quhairin gif the Schireffe failzies, he sall pay twentie pound to the King in the checker zeirlie. Ja. IV. c. 49.

All they quha ar suffered to beg a landwart, suld have ane certaine takin Beggars. given to them be the Schireffe. Ja. I. p. 1. c. 25. Under the paine of burning on the cheeke, and banishment off the countrie of the beggars; and of ane unlaw of fiftie shillings to the King, to be payed be the Schireffe, in case he failzie in keeping of the premisses. Ja. I. p. 2. c. 42. And mairover, the Schireff, Provost, and Baillies within burrowes of royaltie and regaltie, sall pay ane mark for ilk beggar that beis found beggand, except he be cruiked, seek, or weake. Ja. IV. p. 6. c. 70.

And mair-over, the Schireffe suld suffer na beggar to beg within ony parochin, but onlie them quha ar borne within the samin. For ilk beggar shuld be susteined within his awin parochin, and suld have the mark thereof. Ja. V. parlia. 4. cap. 21. And for punishment of strange idle beggars, all Schireffs and uther judges suld make prisoners, stockes, and irons, within burghes, throw-faire-townes, and at all paroch kirkes. Ja. VI. p. 12. c. 147. And suld punish beggars, conforme to the act maid be King Ja. the Sext. Ja. VI. p. 6. c. 74.

To the jurisdiction of the Schireffe perteinis to cognosce and decide anent Tuilzies and strife, spulzies, straikes, wounds, and breaking of the Kingis peace. Lib. 1. breakers o c. 2. And the Schireffe suld take inquisition anent the breaking of the Kingis the Kingi protection, and compel the breakers thereof to pay ten pounds to the King, pe. cc. and assyth the partie. Ja. I. p. 11 c. 134.

Cruves and fishing.

The Schireffe suld destroy veschelles, creilles, and uther ingines, quhilk stoppis smoltes to pass to the sea. Ja. II. p. 14. c. 87. Ja. III. p. 5. c. 37. He suld cause the measure and quantitie of the cruves and zaires to be keiped in waters, quhair the sea flowis and ebbis, to the effect the frie of the fish may ascend and descend; and suld likewaies give up dittay to the justice, in his aire, upon slayers of salmond in forbidden time. "Stat Alex. cap. haec est Assisa. 27. Leg. Burg. c. haec est Assisa, 113. Stat. Rob. 2. Br. cap. Item "ordinatum, 12." The Schireff suld destroy, cast downe, and hald down, all cruves within his bounds, under the paine of 20 pund to be payed to the King. Ja. IV. p. 2. c. 15. Mar. p. 8. c. 68. For the quhilk cause, speciall commission is granted to him. Ja. VI. p. 6. c. 89. Ja. VI. p. 7. c. 111. He suld execute the actes maid anent herring and quhite-fish, and uptake the escheit of the contraveners thereof, and maik compt in the checker. Ja. VI. p. 6. c. 86.

Hunting of the wolfe.

The Schireffs suld hunt and slay the wolfe, and her quhelpes, three times in the zeir; and all the indwellers of the schire suld rise with him, under the paine of ane wedder. Ja. II. p. 14. c. 88.

Archerie.

The Schireffe suld cause bow-markes to be made for archerie, in ilk paroch, under the paine of fourtie shillings, to be uptaken be him to the Kingis use. Ja. IV. p. 3. c. 32.

Schutting with fire-warke.

The Schireffe suld punish all them quha shuttis at deare, rae, or uther wilde beastes, or wilde fowles, with culveringes, pistolettes, or gunnes. Ma. p. 4. c. 9. Nocht onely the Schireffe, but all judges ordinar suld accuse, at particular dietes, all them quha schuttis with culvering, croce bow, at dae, rae, hart, hinde, cunning, dowe, herron, or fowle of reife. Ja. VI. p. 1. c. 16. p. 7. c. 123.

Forestallers.

The Schireffe, and all other officiares, baith to burgh and to land, at ilk courte, sall inquire quhat persones byis victuall, and haldis it to ane dearth; and declare their names to the King, that they may be punished as ockerers, and the victuall escheit. Ja. II. p. 6. c. 23.

Mair-over, the Schireffe suld escheit all gudes quhilkis ar forestalled, coft, or arled be forstallers, and in-bring the twa part thereof to the Kingis use; and the thrid part to himself. a. V. p. 4. c. 20.

And sik like the Schireffe suld punish, be confiscation of all their moveable gudes, all them quha transportis nolt, scheipe, or uther cattel, furth of the realme. Ja. VI. p. 7. c. 124. Ja. VI. p. 12. c. 149.

Policie.

The Schireffe suld punish destroyers of planting of woodes, forrests, orchardes, broome, breakers of dow-cottes, cunningaires, parkes, stankes, zairdes, slayers of hares, makers of mure-burne in forbidden time, and uther destroyers of haining and policie. Ja. VI. p. 6. c. 84. And likewaies suld in-bring to the Kingis use the paines of them quha plantis nocht wooddes, makis not hedges and hainings. Ja. V. p. 4. c. 9.

The unlaw of fourtie shilling suld be taken up be the Schireffe fra play-

ers at the fute-ball, in case the Lord of the land pretermitt to do the samin. Fute-ball.
Ja. I. p. 1. c. 17.

Quhen ony landes fallis, be reason of warde, in the Kingis handes, or of ony uther superior; or quhen, to burgh or to lands, lands are given in conjunct fee, or life-rent, the Schireffe, or the Baillies, sall cause the wardatar finde caution not to destroy the bigginges, or uther policie; and that he sall leave the samin als gud as he fand them; and that he sall susteine the aire, not haveand sufficient blench or few ferme lands. Ja. IV. p. 3. c. 25. And gif the Schireffe, or uther judge, be negligent in requiring caution, being required thereto be the heretoure, or his friendes, he sall refound and pay to the heretoure of the landes, at his perfite age, all damage and skaith sustained throw his negligence. Ja. V. p. 4. c. 14.

Caution
found be the
wardatar
and uthers.

The Schireffe suld take inquisition of them quha wearis claith of gold, silver, velvet, or silkes, contrair the actes of parliament, and send them to the King to be punished. Ja. III. p. 6. c. 4. 5. Ja. VI. p. 7. c. 113.

All they quha usis excesse or superfluitie in banquettes, contrair the tenour of the acte of Parliament, suld be punished be the Schireffe, and uther judges, within the royalitie and regalitie. Ja. VI. p. 7. c. 118. And siklike, the Schireffe suld send to the thesaurar the names of all persones quha breakis and contraveenis the act of Parliament, maid anent the ordering of ilk mannis house, and quantitie of meat and dishes prescribed to ilk man of all estaites, that they may be accused and punished therefor. Mar. par. V. c. 26. The Provost and Baillies, within burgh, suld cause Hostellares take reasonable price for ane mannis dinner and supper, effeirand to the prices of victualles. And suld also set downe reasonable prices upon ilk mannis wark, and suld deliver the samin to the Schireffe, that he may cause the samin price be kept to Landwart. Mar. p. 5. c. 22. Mair-over, the Schireffe suld punish the Barrone, quha examinis nor prices nocht the warkmanship of ilk craft within his Barronie, with the paine and unlaw of ten poundes. Ja. I. p. 7. c. 102.

Banquettes.

Craftesman.

The Schireffe suld send or bring all notars, quha ar temporall men, within the bounds of his office, and present them to the Lords of Councell, to be examined be them quhidder or nocht they be worthie or qualified for the office of the notarie. Mar. p. 5. c. 24. And the Schireffe, with sik persones as the King pleases to adjoyne to him, suld call all notars before him, and examine them. Ja. V. p. 6. c. 76.

The Schireffe suld up-take and inbring all taxationes, and make compt and payment thereof. Ja. IV. p. 2. c. 9.

Taxation.

The Schireffe, with the Barronne, or Lord of the lande, suld see and provide that ilk man be armed according to his estaite and rente; and sall cause weapon-shawinges to be maid zearlie, after the octaves of "Pasche." "Stat. Ro. 2. Br. c. Ordinatum, 27." Or at the least four times in the zeir. Ja. I. p. 2. c. 44. Ja. IV. p. 3. c. 31. Or upon Thursday in the Whitsunday

Weapon-shawing.

oulk. Ja. IV. p. 6. c. 75. Or twice in the zeir throw all the realme, in the moneths of Junii and October, or ony uther day, as sall please the Schireffe, steward, or Baillie. Ja. V. p. 6. c. 85.

Victuall.

The Schireffe suld execut the act of Parliament, anent the keeping or threshing out of victualles, and cause the samin to bee kept and obeyed under the paine of tinsell of his office, in-during the Kingis will. Ja. II. par. 9. cap. 37.

Mettes and measures.

The Schireffe and Chalmerlaine sall cause all mettes and measures to be kept, used, and observed, conforme to the tenour of the actes of Parliament, as they will answer to our Soveraine Lord. Ja. III. p. 4. c. 52.

Horse.

The Schireffe and his deutes suld escheitte and intromet with all horse perteing to Earles, Lordes, Barronnes, and utheris, halden at harde meate langer nor the time prescribed in the act of Parliament. Of the quhilk escheit, the ane halfe perteinis to the King, and the uther halfe to the Schireffe. Ja. VI. p. 11. c. 56.

Escheites.

The Schireffe, at command and direction of the Thesaurer, suld take up and intromet with the escheit guds and geare perteing to rebelles. Ja. VI. p. 6. c. 75.

**Excommu-
nicate per-
sones.**

Divers and sundrie persones are disobedient to the Kingis lawes, baith civil and criminal, and also refusis to obey and fulfill lauchful decreites given and pronounced against them, be judges ecclesiasticall, civil, and criminall; for the quhilk cause, some ar excommunicat and cursed, uthers ar denounced rebels and put to the horne. And therefore the Schireffe (to quhome perteinis the execution of the Kingis lawes and decreetes) suld take and apprehend all cursed and excommunicate persones, at the desire of the Bischope, or his Official, and put them in prison, until they satisfie God and the Kirk. "Stat. 2. Rob. Br. cap. Rex. tali. 31." Speciallie them quha hes remained under the censure of excommunication be the space of fourtie daies. "Quoniam attach. c. Rex. tali. 76. stat. Rob. 3. c. Item, 7." To the quhilk effect, letters of caption being direct to the Schireffe, he suld execute the samin against all cursed persones. And gif they be fugitive, their gudes and landes (gif they ony have) sal be comprised, for satisfaction of the partie. And gif they have nane, they sal be denounced rebelles. Ja. II. p. 5. c. 12.

Rebelles.

All Schireffes, Stewardes, Baillies, and uther officiares, baith to burgh and to lande, suld search, seeke, and apprehend all rebelles beand at the horne, and bring them to our Soveraine Lordis justice, to be justified, conforme to their demerites, under the paine of tinsell of their office for three zeires, gif it be heretable; and in all time cumming, gif it be temporall. And mair-over, to be accused for their negligence in the justice aires, or at particular diettes, as it sall please the King. Ja. V. p. 7. c. 97. Mair-over the Schireffe, and all the saidis judges, alsweill within regalitie as royaltie, suld search, seeke, follow, persew, apprehend, and commit to warde, and present to justice, all declaired traitures and rebelles, contemnandlie remainand at the horne un-relaxed, and suld do justice upon them, gif they have commis-

sion to that effect. And gif the saidis rebelles be fugitive, the Schireffe and uther judges foresaidis suld make denunciation thereof to the Schireffes and judges ordinar of the foure halves about, and require them to use the like diligence, under the paine to the quhilk the traitoures and rebelles are subject, or hes incurred. Ja. VI. p. 12. c. 124. And furder, the Schireffe suld incurre and fortifie uther officiares to take up the escheite of rebelles, and suld make convocation of the Kingis lieges to that effect. Ja. VI. p. 6. c. 74.

Mair-over, all letters of horning, with the indorsation thereof, suld be registrat be the Schireffes clerke within fiftene daies after the denuntiation; and being marked and subscribed be him, suld be delivered to the partie. And sik-like, all relaxationes suld be registrat in the Schireffes buikes, within fiftene daies after the publication thereof. Ja. VI. par. 6. cap. 75. Ja. VI. par. 8. cap. 142. And ilk Schireffe suld cause proclaime the names of the rebelles at the mercat croce of the head burgh, upon mercat daies, preceeding the three head courtes, and affix ane Catalogue, containand their names, upon the mercat croce, and in the Tolbuith; and send ane uther roll thereof to the Thesaurar, containand the names, and causes for the quhilk they were denounced. Ja. VI. p. 6. c. 74.

Ratification
of letters of
horning.

Last of all, to the effect that they quha are in bona fide be nocht deceived in buying of landes or gudes fra them quha ar interdicted or inhibit, for eschewing of sik fraud, the Schireff, "Tanquam bonus Praetor," suld cause all inhibitiones and interdictiones, with the executiones thereof, to be registrate in his buikes, be his Clerke, within fourtie daies after the publication of the samin. Ja. VI. p. 7. c. 118.

Of Inhibi-
tions and in-
terdictiones.

Quhat is the jurisdiction and office of ane Schireff, may be easilie knawin be the lawes and constitutiones abone written; quhairof sindrie containis certaine speciall paines to be enjoyned to him for his malice or negligence. And now I thought gud to declare certaine generall penalties prescribed be the lawes of this realme. And first, the Chancellor, Justice, Chalmerlaine, Schireffe, nor nane of their deputes or substitutes, sall susteine or maintaine pleyes, quarrells, or actiones; nor sall not take landes, or uther budde or rewarde, from the partie, for hinderance or delay of justice. And gif ony sall happen to be convict thereof, he sall be punished at the Kingis will, and sall tine and forefalt his office induring his life time. "Stat. 2. Rob. Br. c. Dominus Rex. 22."

Of the
pains and
punishment
of Schireffs.

Secondlie, in the time of King David the Second, becaase the haill communitie and inhabitants of the realme complained heavelie upon Schireffes, Maires, Serjandes, and utheris the Kingis ministers of the law; It is statute and ordained, that incontinent before the end of the Parliament, the Justice Generall, with the Chalmerlene, suld call and conveene before them, and the inhabitants of ilk Schireffdome, all and sindrie the Schireffes, and uther Officiares, alsweill heretable as temporall, and deputes, and taxe and modifie the damage and skaith done be them to the King and his lieges to ane certaine summe; Quhilk taxation being maid, the Schireffe, and uther

Schireffs
may be
punished at
the Kingis
will, and
deprived.

officiaries, suld be put to the knowlege of ane gude and sufficient assise; and being found culpable, and convict, they suld incontinent be put in the Kingis prison, until he, with advise of his Councell, declare his will. And mair-over, all the saidis Schireffs and uther Officiaries, either heretable or temporal, being filed and convict, suld forefalt and tine their office induring their lifetime. Da. 2. in his Parliament halden at Perth, 18. Feb. 1369, and of his reigne 40. zeire.

The Schireff
may be
removed be
the justice,
and punish-
ed be the
three
estaites.

Thirdlie, the Justice General, in his justice aire, sall challenge and accuse the Schireffes, and uther the Kingis officiares, and take cognition how they have used and exerced their offices; and gif ony of them be founde culpable or faultie, the justice sall remoove him fra his office until the nixt Parliament; and sall put ane uther in his place, to use the office in the meane time. And mair-over, the justice sall take sufficiente sovertie of him, under certaine paines, that he sall compeir in the nixt Parliament to underly the determination and punishment to be enjoyned to him be the Parliament for his fault; and he sall no waies be restored to his office, bot gif the three estaites think the samin expedient. Stat. Rob. Br. 3. Ex. libro Sconensi.

Schireffes
heretable
and tempo-
ral.

Fourthlie, gif the Schireffe, or ony uther officiar of law, be lauchfully proven, or notourlie knawin faultise, or negligent in the execution of his office pertaining to him in fee and heretage, he sall tine the samin, and all the profites thereof, for ane zeir and daye, and sal be punished in his persone and gudes at the Kingis will, after the qualitie of the trespas. And gif his office is temporall, he sall tine the samin for all the time he hes it; and uther-waies sal be punished, as said is. Ja. II. p. 14. c. 77.

Fiftlie, gif the Schireffe, or ony judge ordinar, will not execute his office, and minister justice, he sal be punished, and put fra his office, for ane certaine time, after the discretion of the King and the Councell, and punished be the Kingis will, and pay the expences to the partie compleinand. And gif he be found partial or culpable in the administration of justice, and is Schireffe in fee and heritage, he sall tine his office for three zeires. And gif he be temporall, havand his office for ane certaine time, he sal be put fra the samin perpetuallie, pay the expences to the partie offended, and punished in his person at the Kingis will. Ja. III. p. 5. c. 26.

Tinsell of
honour and
fame.

Sextlie, all Schireffes, and uther judges, alswell Spirituall as Temporall, within regalitie and royaltie, sall do trew and equall justice to all the Kingis lieges, without ony partiall counsell, or taking of buddes, under the paine of tinsell of their honour, fame, and dignitie. Ja. V. par. 7. cap. 104.

Extract of
process.

Gif ony partie compleinis upon the Schireffe, that he hes done to him wrang, in giving or pronouncing ony sentence or decreete against him, and desiris the samin to be extracted and delivered to him, upon his expences, the Schireffe suld give and deliver the processe, led and deduced before him, to the partie, upon his expences; and suld take foure pennies for ilk acte allanerlie. Ja. IV. p. 6. c. 67. At the least, he suld extract proces, decreetes, give saisinges and retoures, at reasonable prices. Ja. VI. p. 12. c. 124.

PARAINESIS AD IUDICES.

OMNIS qui judicare debet, Stateram in manu teneat: Nam aequalia et sine personarum exceptione esse debent judicia. Nihil iniquius quam munera capere in judiciis: Quia munera exsaccant corda prudentium, et subvertunt verba justorum. Qua enim Balance judicabitis, eadem judicabimini. Quapropter, tu judex, timeas Deum judicem; ne forte, eo judicante, damneris. Stat. Wilhel. cap. 27. Proinde sis Deum honorans et timens; sapiens et in scientia potens; veritatem sequens et amans: avaritias odiens et detestans. de Maritag. c. 2. Cave justitiam subvertas odio, per quod inventa aliqua malitiosa cautela, contra partem tibi exosam, reddis judicium indirectum: Vel cupiditate, dum corruptus muneribus, malitiose judicabis: Vel timore, dum metu potentioris vere judicare non audes: Vel amore, dum causa amicitiae defendis amicum, et suppressis inimicum, de Maritag. c. 4. Facias igitur justitiam aequaliter, tam pauperibus, quam divitibus. Stat. 2. Rob. Br. cap. 2. Quia omnes iudices et magnates, qui plus favent his, quam illis in judicio, aut malefactores ullo modo manu tenent, sunt falsi, et perjurati contra Deum, Regem, et populum regni, Leg. Mal. Mak. c. ult. in fine.

SCOTIA, sune-time signifies that part of Scotland quhilk is on the north part of the water of Forth. "Ass. reg. David. c. statuit. 21." And is opposed to Lodoneium, quhilk now we call Loudiane. For King David the First, in the third zeir of his reigne, Anno Domini 1126, be his charter maid, "Omnibus Scottis et Anglis, tam in Scotia quam in Loudoneio constitutis," gave and disponded to St Cuthbert and his Monkes in Durham, (Dunelmensi Ecclesiae) the landes of Coldinghame, Lummesden, Reningtoun, Eiton, Fissewik, Auld Cambus, Swintoun, Prendre-geist, and uthers, lyand in Lodoneio

quhilk now lyis in the Mers, and schireffedome of Berwick. And in the actes of Parliament, justices generall ar ordained to be, ane or twa, on the south side of the water of Forth, and ane or twa on the north side thereof. Ja. II. p. 14. cap. 97. Quhilk agries with the acte maid be King James the Second, par. 3. c. 5. quhair it is statute, that the justices on the south side of the Scottish sea set their justice aires, and halde them twice in the zeir. And also on the north side of the Scottish sea, as auld use and custome is. And in the lawes of Malcome Mac-kenneth, "ca. 4. Mare Scotiae" is taken for the water of Forth.

SECTATOR, an soytor in courte, quhais qualities and office—Vid. Verb. Sek.

SEK of wool, and fairing of gades be the sek, serplath, and tunne.—Vid. Serplath.

SERANTERIAE, "Sergenteriae, lib. 2. c. Dicitur autem, 72." In the quhilk place, "pro Serianteriis, mendose legitur, Suggestoribus. Serianteria a "seriando," as "ministerium a ministro," or "servitium a servo," signifies an manner of halding of landes, speciallie in the lawes of England, quhair "grande seriantye," is quhen an man haldis his landes of the King, for the quhilk he suld passe with him in his hoist, or to beare his banner with him in his warres, or to lead his hoist or armie. And hereto belangis warde, mariage, and relieve, quhilk is ane maist speciall knight's service. "Petit ser. iantye," is quhen ane haldis his landes of the King, yeelding to him ane knife or buckler, ane scheife of arrowes, ane bowe, or uther sik service, conforme to his infestment; quhairunto nawaies belangis warde, mariage, or relieve, quhilk we may call blenche-ferme, or "alba firma." Read the statute maid be King Edward the First, King of England, 18 zeire of his reign, anent wardes and relieves.

SERIAN, "Sergeant," ane French word. For like as messengers cummis fra the French worde "Messiers," swa sergeant likewaies cummis fra sergent, "Quae est vos composita, de Serrer, quod est includere, et gent, "quod pro gente, plebe, vel populo usurpatur. Itaque Seriandus dicitur qui "jussu magistratus, quemlibet de populo reum criminis, in carcerem conjicit, "seu includit;" that is, he quha, at the command of the magistrate, inclusis, or lockis in prison, guiltie persones delated, or suspect of ony crime. "Seriandus curiae," or "serviens curia," the Seriante of the courte, officiar, executor of letters or summondes, quha be the interpretours of the civill law is called "Nuntius, vid. Recordum."

SERPLATH. Ja. I. p. 2. c. 38.; Ja. II. p. 14. c. 68, containis fourescore stanes. For the Lordes of Councel, in Anno 1527, decerned foure ser-

plaithes of packed wooll, to conteine sixteene score stanes of wool. Be the trafficque of merchandes now used, the merchandes usis to pey fraughte for their gudes to Flanders be the sek ; to France, Spayne, and England, be the tunne ; and to Danskine, and the Easter Seas, be the serplaith. Three man-
ers of furing
of gudes.

As I understande, ane serplaith of gudes is onelie counted beruixt merchands and skippers, for furing of gudes to the Easter Seas, and frathine hame to his realme. Swa that, for everie serplaith of gudes fured, or promised to be fured eastward, the skipper is oblished to fuir hame to this realme twa last of gudes ; and this serplaith of gudes is of na greater quantitie nor the sek of gudes to Flanders.

1
Serplaith.

And ilk sek, be the acte of Parliament, Ja. VI. p. 7. cap. 108, suld conteine twenty-foure stane of wooll : and be the dailie calculation of merchands, fourtie Trois stane. Ilk Trois stane containis sexteene pound Trois. And ilk pound weichte thereof containis sexteene ounce Trois. 2
The sek.

The sek of wooll is commounlie set be the skippers to ane tunne. Ilk tunne containis sex hundreth pound Trois weicht. Ilk hundreth weicht containis five score ponde weicht, quhilk is sex stane and ane quarter Trois. Seks of wool.
Tunne.
Hundreth
weicht.

The wooll, quhen it is boucht be merchandes, is boucht be the Trone stane, quhilk containis commounlie xix. pound and ane half Trois : Alwaies concerning the sek of wooll, I find na solid or constant weicht thereof ; for seckes will be mair, and some will be lesse, nor fourtie Trois stane ; but commonlie the sek of wooll containis fourtie Trois stane, as said is. Tronestane.

Ane last of gudes fured hame, containis commounlie twelve barrells. And the auld forme of furing of gudes fra Danskene to this realme, was for every serplaith, as it is zit, twa last. Bot for this last, the skippers furies hame fourteen barrells, ilk barrell being of weicht ane schip pound. And of licht gudes, sik as lint and hempt, there is fured for the serplaith twa last. 3
Furing of
gudes be the
Last.
Barrell.

Ilk last is twa packs : And ilk pack is als great als halfe ane sek of wooll skinnis, and containis in weicht threttie-sex Sprusse stane, Pack.

Ilk Sprusse stane containis twenty-aucht pound Trois weicht. Sprusse
stane.

Swa the last, exactlie weyed, will conteine of our Trois weicht sex score sex stanes. And for ane last of walx, that is fured hame be strangers, fourteen schip ponde. And be Scottish skippers, twelve schip ponde. Also, of tar, pick, and siklike wares, twelve great barrells for the last, and fourteen small barrells. Thir great barrells are called Hamburg trees, and ar in greatnesse nocht unlike to our salmond trees, and sulde conteine fourteen gallounes ; and the small barrells ar some what greater nor our herring trees. Last of
walx.
Of Tar,
Pick.
Great and
little bar-
relles.

Likewaies of rye meill, some times twentie-four barrells ar fured for the last, speciallie be strangers ; and be our awin skippers auchteene barrells for the last thereof. And ane last of rye is some time auchteene bolles, and some times nineteene bolles in measure.

Item, ten seckes of wooll makis ane last of wooll.

- Daiker.** Likewaies, ten hides makis ane daiker, and twentie daiker makis ane last;
Grosse. twelve dowzene of gloves, or ledder poyntes, makis an grosse; and ane great grosse conteines twelve single grosse.
- Barrell of Brasse.** Ten stane of brasse makis ane barrell.
 Sex barrells of English drinking beare makis ane tun.
- Last of Salmonde.** Twelve barrells of salmonde are bocht be the merchandes for the last, bot in furing of them over the sea, the skippers countis onely nine barrells for the last.
- Flanders Barrell.** And likewaies the sek, albeit it be counted in Flanders to twelve barrells, zit twelve of their barrells conteinis sexteene commoun barrells.
- Fidder of Lead.** The fidder of lead conteines neere by sexscore and auchtstane.
Schippe pound. Ane schip pound conteinis sexteene stanes and ane halfe of Scottish Trois weicht.
 Sexscore of skinnis is reckoned to the hundreth.
 As likewaies, sexscore elnes of woollen claith is counted for ane hundreth. Ja. VI. p. 7. c. 108. Quhilk is conforme to the auld use observed in the daies of King David the Seconde, as is manifest be the custome compt, maid be the customer of the burgh of Striviling, the zeir of God ane thousand three hundreth sextie-acht zeirs.

Weights and Measures in Orkney.

THE malt, meill, and beare are delivered in Orkney be wecht in this maner Imprimis, 24. marks makis an setting. Item, 6. settings makis an meale, Item, 24. meales makis ane last. Item, of meill and malt called *coist*, ane last makis ane Scottish chalder. Item, ane last and ane halfe of beare conteinis 36. meales; 36. meales makis ane chalder. Item, the butter is delivered in barrells, quhair the quantitie is great; bot quhair the quantity is small, it is delivered in marks and lesh pounds, that is to say, xxiiij. marks makis ane setting, as said is, and 6. settings makes ane lesh pound. Item, ane stane and twa pound Scottish makis ane lesh pound. Item, 15 lesh poundes makis ane barrell. Item, 12. barrells makis ane lash. Item, the flesh is delivered be apprising, viz. 10. meales makis ane sufficient cow, and ane sufficient oxe. Also ane gild oxe is apprised to 15. meales; and ane wedder is four meales. Item, ane gouse is twa meales. Item, an capon is half ane gouse, viz. ane meale.

SERVICIUM *Militare*, knightes service, and speciallie concernis warde and relieve.—Vide Serianteria.—Vide Hawbert.—Vide Warde.

SERVIENS “Curiae, seriandus curiae. Leg. Malc. Mak. cap. 3.” Ane seriand, or officiar of courte, the executour of summondes, quha summondes

and attachis ony persone to compeare in ane court to answere to ane uther, conforme to law and reason. "Molinæus in stilo supr. cur. par. 1. c. 20." Quha is called *serviens*, because he suld sweare to serve leallellie and trewlie the King, in execution of his office. "Quon. attach. c. Nullus, 57."

SETTER-DAYIS slop, "stat. Alex. cap. hæc Assisa, 27. Leg. Burg. cap. "hæc est Assisa, 113." Jam. I. Parlia. 1. 26. Maij. cap. 11. Jam. IV. Parlia. 2. cap. 15. quhilk statute maid, as is alleaged be King Alexander, is ascribed to King David be King James the Fourth, in the place foresaide. Setter-dayis slop is ane space of time, within the quhilk it is nocht leasum to take salmonde fish; that is, fra the time of even-sang after noone on Setterday, untill the rising of the sunne on Mononday. "Stat. 2. Rob. cap. Item ordi-
"natum. 12. stat. 1. Rob. Br. cap. 8. Leg. Forest. cap. Omnes aquæ, 85. Iter. "Camer. c. calumniabuntur, 16,"

SIMINELLUS, "Leg. Burg. c. 122." From the Latin worde *simila*, quhilk signifies the beste and smallest parte of the quheate or flowre, quhite bread or maine bread: in the quhilk signification in the Dutche tongue, it is commounlie called *semmel*.

SOK, "Lib. 1. c. 3." Ane auld word used in chartoures and infest-mentes, quhilk in sindrie auld buikes containd the municipall lawes of this realme is called "secta de hominibus suis, in curia, secundum consuetudinem "Regni." Swa after my opinion, he quha is infest with sok (quhilk now we call soyt, from the French worde "Soite, h. e. sequela") hes power and liber-
tie to hald courtes within his awin barronie or landes; in the quhilk courts, "homines sui," or his vassales, suld give soyt, and send for them ane quha is called soytour, or "sectator a sequendo;" because he suld follow the courte, in the quhilk he suld compeare. This office was verie profitable for furthering of justice. And first, he quha is oblished to give soyte in the Courte of his Over-lorde, suld do the samin conforme to the tenour of his infestment, and na utherwaies. "Leg. Forest. c. nullus, 68. ca. Si hæreditas, 69." And gif he aucht three soytes be his infestment, he sall compeare bot at three head iij, Soytes. courtes in the zeire, without summondes or warning. "Mod. ten. cur. c. 1. "c. 31." Na judge aucht of law, or of reason, to accept ony man in courte as soytour. Bot gif he can make sufficient and lauchfull reporte of processe, doomes judgements, and in lauchful forme give and pronounce doome of mutes and pleyes in Court, followed and defended before him in courte.—
"Mod. ten. cur. cap. 38. Quon. attach. c. Nullus sectator, 20." And ilk soytour, before he be admitted be the Bailie, or Judge, suld be examined in three courtes gif he can make recordes of the courts, and give sufficientlie ane warde, or ane doome of wardes or doomes, asked in the court or not. And then, quhen he is be his fellowes admitted, he may not afterward for weaknesse of knowlege be rejected. "Quoniam attach. nullus, 26,"

Sectator.

Soytore suld
be qualified.

The aith of
Soyture.

An soytour is obleished to make faith that he sall leallie and trewlie make recorde of Courte, (that is of the claime, libell, and process), and sall pronounce lauchful and trew sentence, according to the knowlege given to him be God; and sall, after his understanding, leallie and trewlie serve in during the time of his office. "Stat. Gild. c. 50." The court beand fensed, the serjand thereof sall call the soytes, and defalt the absentes that are nocht

The soytour
unlawis the
absentis.

lauchfullie essoinzied, and gar ane soytour of the courte deeme them in ane un-law, with the consent of his fellowes and colieges. "Mod. ten. cur. c. 1."

Falsing of
doomes.

Be the auld law of this realme, and actes of Parliament, James IV. p. 6. c. 95. doomes and decreetes given and pronounced be soytoures in ane inferiour court, was falsified and reduced in ane superiour court, as the processe of brieves, wrangouslie deduced in barron courte, was falsified in ane schireffe courte, and doomes given in the schireffe courte was falsified in the justice court. "Lib. 2. c. Dos. duobus. 19." And last of all, doomes pronounced in the justice court was falsified in Parliament before the Lordes, called "Auditores querelarum," in this manner contened in the register, 7. October 1476. "Datum fuit iudicium infra-scriptum, per os Alexandri Dempster "judiciarij Parliamenti, in præsentia Serenissimi Principis Jacobi tertii. S. D. "N. Regis, cum corona in capite suo et sceptro in manu, sedent. in Cathedra "Justiciæ Parliamenti sub hac forma." The Lords chosen be the three estaites of this present Parliament, upon discussing of the doomes, deliveris and declaris that the doome given in the justice aire of Edinburgh, the xij. of Julii last by past, be the mouth of Andrew Blackfurd, soytour for the lands of N. for John N. and Janet N. his spouse, and againe called be David Balfoure of Caraldstoun, fore-speaker for Archebald N. was evill given, and weill againe said, for diverse reasones schawen and understand to the saidis Lordes; and therefore ilk soytour of the said doome, and their lordes, ilk man be himselfe, is in ane ammerciament of the courte of Parliament, sik as effeiris to be taken in the justice aire, and in ane unlaw of the said justice aire for them: and in ane unlaw of Parliament amangst them all, sik as effeiris of law: and this I give for doome. Swa it is manifest, that in all courtes inferiour to the Parliament, the soytoures pronounced the doome. And gif the doome given be them in ane Barronne courte was falsified in the Schireff courte, all the soytoures payed bot ane unlaw. Bot gif the doome given be them in the Schireffe courte was falsified in the justice courte, ilk soytour payed ane unlaw of ten poundes; of the quhilk diversitie the reason is contened in "Quoniam attach. c. quilibet. 7."

Soccomanus.

SOKMANRIA, or Soccage, is ane kind of halding of landes quhen ony man is infest frelie without ony service, warde, relieve, or marriage, and payis to his maister sik dewtie as is called "petit seriantie." Or quhen ane haldis his landes in name of Burgage, or in "Libera Eleemosyna, de Maritag. "cap. 1. Soccomanus," is called ane vassall, or freeholder, quha haldis his landes in maner foresaid, or in blench-ferme, "sive nomine albæ firmæ,

"et opponitur militi, qui tenet per servitium militare;" that is, be service of warde and relieve. "Lib. 2. cap. Si quis plures, 30. Cap. et hæredes, 41." And in Magna Carta of England, "Anno 51. Henr. III. cap. 27," mention is maid of sindrie formes of halding, viz. Free-ferme, burgage, soccage, and Soccage, knight service. Read the statute maid be Edward the first, King of England, the xvij zeire of his reigne. Utheris allecagis that "Soccagium" cummis fra "Socco, sive Aratro," affirming that Soccage is properlie quhen the tennent is bound and oblished to cum with his pleuch to teill and labour ane part of the Lordis landes. Concerning tenures and divers halding of landes, reade the treatise written be Littleton.

STALLANGIATORES, A *stallo*, Creamers or Forraine merchandes, quha within burgh, in the time of faire or mercat, payis certaine dewtie for their stall or stande, in the quhilk place they sell their merchandice. For it is ordained, that ilk stranger sall either agree with the Provost of the burgh in the best form as he may, or else ilk mercat daye sall paye to him ane half pennie. "Leg. Burg. cap. Quilibet, 39." And in the auld forme of customes it is called the stallange of the mercate. And "Leg. Burg. Mercenarius, 40," it is called "Stallum," or "Botha in Foro."

STINGISDINT, "Leg. Burg. c. Sciendum est. 9. Ane dint or straike with ane sting or batton. In Latin *Fustigatio*.

STERLINGUS, "Est genus ponderis," ane kind of weicht conteining threttie twa cornes or graines of quheate, "Vt in Assisa Reg. Da. de ponderibus et mensuris." And in the Canon law mention is maid of five shillinges sterling, and of ane marke sterling, "c. 3. de Arbitris. c. Constituit. "12. de procuratoribus." And the sterling pennie is swa called, because it weyis sa mony graines, as I have sindrie times proven be experience. And be the law of England, the pennie quhilk is called the sterling, round, and without clipping, weyis threttie twa grains of quheat, without tailles, quhair of twentie makis ane ounce; and twelve ounces makis ane pound; and aucht pound makis ane galloune of wine; and aucht gallounes makis ane buschell of London, quhilk is the aucht part of ane quarter. "Anno 17. Edward 2. "c. 10." The quhilk cunzie was meikle used within this realme, as is manifets by auld charters and evidentes. For the sexteenth daye of August, the zeire of God 1395, "Walterus Senescalli, Dominus de Ralston, Ane charter "Vicecomes de Perth, impignoravit, necnon nomine pignoris dedit, et con- conteining "cessit Nobili et potenti Du. Dom. Roberto, Comiti de Fife et Menteitl, ane rever- "totam et integram Baroniam suam de N. pro ducentis marcis sterlingorum sion, and "monetæ Scotiæ, ipsi pereundum Comitem mutuatis, et præ manibus sterling "plenary persolutis. Tenent. et habent. ipsi Comiti, et hæredibus suis, de money. "Domino Rege, &c. Quosq. dictus Walterus Senescallie, aut hæredes sui "præfato Domino Comiti, vel suis hæredibus, ducentas mercas sterlingorum

“monetæ Scotiæ vno die, inter solis ortum et occasum, in Ecclesia Parochiali
 “de N. persolverit, vel persolverint. Et præterea dictus Valterus omnes
 “firmas, redditus, commoditates, et proficua, de dicta Baronía, medio tempore
 “provenient, dedit et concessit, pro se et hæredibus suis, prædicto domino
 “Comiti, et hæredibus suis, pro suo consilio bono, ipsi impenso, et impen-
 “dendo. Faciendo inde annuatim, prædictus Comes et hæredis sui, Domino
 “Regi servitia debita et consueta.”

The quhilk charter containis the reversion, and also ane donation of the
 profites of the landes quhilkis were wadset, conforme to the practique used
 and observed unto the time of King James the Third, of gude memorie.—
 Vid. Regres.

SUBVASSORES, “Subvaluassores,” base halders, or inferioure halders,
 speciallie they quha haldis their landis of Knichtes. “Leg. Malc. Mac. c.
 “4. Quoniam attachiamenta cap. Si aliquis, 49. Ass. Reg. David, c. statuit. 8.”
 Quhair it is ordained, that ilk person quha is accused criminallie sall be judged
 be his peere, or superioure in estate and dignitie.

T

TAYNT, *vide* Attaynt.

TENEMENTUM is commonlie taken for the propertie of onie landes, or
 immoveable gudes within burgh, or without the samin. “Lib. 2. cap. Dos
 “duobus, 19. capit. Fieri autem, 67. Liberum tenementum.” And the
 superiour sulde not have the warde, the tenement perteining to his vassal
 being minor, nor can crave na service nor relieve fra him, being minor or
 major, except he first receive his homage. “Lib. 2. cap. Prædictis, 60.” In
 the quhilk signification it is commounlie used in the lawe of England.

TERRÆ *Dominicales*, an word commounlie used in charters and infeftments,
 quhilkis ar called ane Maînes, or domaine lands laboured and occupied be
 the lord and proprietar of the samin; from the Frenche worde, “Domaine,
Domanium. “Domanium, or Demanium;” quhilk worde properlie signifies the Kingis
 landes perteining to him in propertie. “Quia domanium definitur illud quod
 “nominatim consecratum est, unitum et incorporatum Regiæ Coronæ, ut
 “scribit Chopinus de demanio Franciæ. Tit. 2. per. l. Si quando, 3. C. de
 “bon. vacant. Lib. 10. Et Mathæus de Afflictis in Constitut. Siciliæ, Lib.
 “1. Tit. de locatione demanii, 82,” quhilk may be called “Bona incorporata,
 “et in corpus fisci redacta.

THANUS is ane name of dignitie, and appearis to be equall with the sonne of an Earle. For the *Cro* of the ane and the uther is alike. "Lib. 4. c. Si quis calumniatur, 28. statuit, 64. And *Tbanus* was ane freeholder, halding his landes of the King. "Quoniam. attach. c. Recordatio, 63. Ass. Reg. Da. c. Recordatio, 17. stat. Alex. c. Recordatio, 26." And gif ane man not taken with the fange is accused of theft, and na sufficient probation is deduced against him, he suld purge him be the aith of twentie seven men, or of three Thaners. "Lib. 4. c. Si quis calumniatur, 28. Thanagium Regis," signifies ane certaine part of the Kingis landes or propertie, quhair of the rule and government perteinis to him, quha therefore is called *Tbanus*. For "Domania Regis, et Thanagia Regis idem significant. Ass. reg. Da. c. statuit Dominus, 38." It is ane Dutch word, for *teiner* signifies ane servand, and *teinen* to serve. And *Thane* is likewise ane servant, and "unter Thane" ane inferiour servand or subject.—Vid. Leg. Britonum, verbo Thanus.

THEME, lib. 1. c. 3. is power to have servandes and slaves, quhilk are called "nativi, bondi, villani," and all Barronnes infest with *Theme* has the same power; for unto them all their bondmen, their bairnes, gudes and gear, properlie perteinis, swa that they may dispone thereupon at their pleasure. "Lib. 2. c. Consequenter, 13. cum. seqq. And in sum aulde authentick buikes it is written, "Theme est potestas habendi nativos, ita quod generationes Villanorum vestrorum, cum eorum catallis, ubicunque inveniantur, ad vos pertineant." *Theme* cummis fra *than*, "id est, servus," and therefore sumtimes signifies the bondmen and slaves, conforme to ane aulde statute and law, "de curia de Theme. Quod si quis teneat curiam de Theme, et illa querela in illa curia movetur, ad quem theme vocantur: non debet illa curia elongari, sed ibidem determinari, et omnes Themi ibi compareant." Quhilk is understand of the question of libertie, quhen it is in doubt quidder onie person is ane bond-man or free-man. Quhilk kind of proces suld not be delaied, bot summarlie decided. Quhair of there is twa kindes, for either ane free man is alleaged to be ane servand and slave, or ane quha is in servitude desiris to be made free, and put to libertie. "Dict. Cap. 13. Cap. 14."

Curia de Theme, id est, de nativis, seu Servis.

THIFT-BOTE, *vide* Bote.

TIMBRELLUM, "Tumbrellum," ane kinde of torment, as stocks, or jogges, quhairwith craftsmen, sik as browsters, are punished. "Leg. Burg. cap. Si aliquis, 21, quhair it is called "Castigatorium."

TOLL, "Lib. 1. cap. 3." Custome, from the Greek worde of the samin signification Τηλος, he quha is infest with the Toll is custome free, and payis na custome; quhilk is maniest be sindrie auld buikes, quhairin it is written, "Toll, h. c. Quod vos et homines vestri, de toto homagio vestro sint

"*quieti de omnibus mercantiis, et de tolneio de omnibus rebus emptis et venditis.*"

Mairover, all Earles, Barronnes, Knichts, vassalles, liferenters, freeholders, and all quha hes landes "*nomine eleemosynae,*" suld be quite and free fra paymente of toll and custome within burgh, in buying meate and claith, and uther necessair thinges to their awin proper use. Bot gif ony of them be commoun merchandes, they suld paye tholl and custome; albeit they have als greate libertie as Barronnes. "*De Judic. cap. 3. Leg. Forrest. cap. "Comites "13."* And in the auld Britton lawes of King Edward, it is written—"Thoill, *quod nos decimus Tholoneum, est quod ita infeodatus habeat liber, tatem emendi et vendendi in terra sua.*"

TORRALIUM, "*Thoraliu, a torrendo,*" is called ane Kill, quhair cornes are dried. "*Leg. Burg. c. Si quis, 53. De combustione domus aut torralii,*" of the burning of the house or kill. Gif ane servand burne rackleslie thy house, kill, or neighbours house adjacent, he suld not be punished, bot tinis his service; bot gif ony man hiris ane kill, and it burne, he sall pay bote the hire. Bot gif he borrowis it, and it burne, he sall paye the value of it to the partie skaithed. "*Vid. Jam. 1. Parlia. 4. Cap. 71. cum seqq.*"

TORT, "*Et non reason,*" unreason, wrang, and unlaw, "*Stat. 2. Rob. "Br. c. Item quod nulla, 17."* Tort in the French toung is wrang or injurie; Unlaw. unlaw cummis fra "*on Privativa particula apud nos et Germanos, eodem modo quo In, apud Latinos,*" and law, or lauch, "*id est lex; quasi sine lege, vel contra legem, vel quod non jure fit. Jus Normand. Lib. 12. cap. 1.*" Actiones of wrang and unlaw appearis to be civill actiones, and ar opponed to actiones criminall, touching life and lim. "*Stat. Alex. cap. Si quis 9. Cum "seqq. Leg. Mal. Mak. c. 4."*

TOSCHEODERACHE, ane office or jurisdiction, not unlike to an baillierie, speciallic in the Iles and Hielandes. For 9. Mart. 1554. Neill Mackneill disponed and annalied to James Mack-Oneill the landes of Gya, and utheris, with the Toschodaira of Kintyre. Some alleagis to be ane office pertaining to execution of summondes. "*Lib. 1. cum autem. 8. Quon. attach. c. Si "aliquis, 49."* Sik as ane quha summondis, attachis, or arreistis ane uther, to compeir before ony judge. "*Stat. Dav. c. 6."* Uthers understandis the same to be ane Crowner. "*Lib. 4. c. Raptus, 9."* Last, summe understandis it to be ane searchour and taker of thieves and limmers; for King Evenus did statute, that in sindrie Shireffdoms there suld be sindrie searchours of thieves, reivers, and of them that lyis in wait in the hie streetes and commoun passages. "*Hector Boetius, Lib. 2. Lib. 10. Aberrans (inquit) "Pecus, aut Domino furum judagatori (Tochederach, vulgus appellus) aut "Sacerdoti reddito; quod si triduum apud te retinueris, furti reus esto."* In

the Civill Law they are called "Latrunculatores. Leg. Solemus, 61. ff. de Ju-
" dic." Latruncula-
tores.

TIMBRIA, "Pelliam, leg. Burg. cap. Capitulum, 138." Ane timmer of
skinnes; that is, swa mony as is inclused within twa broddes of timmer,
quhilk commounlie containis fourtie skinnes; in the quhilk maner mer-
chandis usis to bring hame matrik, sable, and uther costlie skinnes and fur-
rings.

TIMBRELLUS, "Dicitur parvus Cetus," ane little quhaill. "Le. Fo-
" rest. c. Si quis cetum. 17. de Judic. c. 27."

TINNELLUS. "De Judic. c. 27. Leg. Forest. c. Si quis Cetum, 17."—
The sea marke, utherwaies in English tyde mouth; that is, the farrest
parte quhair the sea tyde flowis. "Littus quo scilicet fluxus hybernus maris
" maximus excurrit, hoc est, quantumcunque mari aliquo tempore plus exten-
" ditur in hyeme vel æstate, tantum est littus ejus, sect. Flumina. Et ibi Gl.
" Instit. de rer. divis." Litus.

TRAISTIS. Jam. III. par. 14. c. 99. Signifies ane roll or catalogue, con-
teinand the particular dittay taken up upon malefactoures, quhilk with the
portuous is delivered be the Justice Clerk to the Crowner, to the effect the
persones quhais names are contained in the portuous may be attached, con-
forme to the dittay contained in the traistis. For like as the portuous com-
prehendis the names of the persones indited, swa the traistis containis the
kindes of dittay given up upon them; quhilk is swa called, because it is com-
mitted to the traist, faith, and credite of the clerkes and crowner; quha, gif
they be trustie and faithful, suld nocht reveale, deléete, change, or alter the
samin. Jam. II. p. 6. c. 28.

TRIBULA, "Leg. Burg. cap. Si homo, 16." Ane flaile quhairwith corn
is threeshen, "A terendo, quod frumentum terat." Like as "Tribulus" is
called ane thrissell, and "Tribulum" ane pestell, quhairwith spices or ony
uther thing is brayed in ane mortar. "Barbare magis quam Latine, secun-
" dum usitatum versum a pueris in scholis decuntatum; tribulus threshill, la
" flail, tum quoque pestell."

TUERNAY, "Quid sit, valde ambigo, et hic aliorum avide expecto judi-
" cium." In the Burrowe lawes. "Cap. Quilibet, 34. Si uxor alicujus
" fuerit caluminiata de aliquo, in placitis Burgorum utitur Tuernay," that is,
as in the auld English buik, the husband may do richt for his wife in courtes
of Burgh. "Et de judic. cap. cum quando, 28. Si quis fuerit implacitatus
" coram justitiario domini regis, vel alio ballivo, si dominus ejus, vel ejus Ba-
" livus venerit et allegaverit pro ipso in debita hora, potest recuperare curiam

“ domini sui. Et si per negligentiam suam responderit et dixerit tuentynay
 “ de omnibus sibi oppositis plane respondebit, et sic amittit curiam Domini
 Twentynay. “ sui. In quibusdam libris legitur Twentynay. Itaque conjicio esse antiquum
 “ verbum forense, quo reus utens, intelligitur approbasse judicem, adeo ut
 “ eum postea declinare non possit.”

V

Immobile
 vadium:

VADIUM, “ Vadimonium,” from ane auld worde, “ veddum,” used in the Britton lawes; in Latine “ Pignus,” in French “ Gage,” quhilk we call ane wedde. “ Immobile vadium,” signifies immoveable gudes, sik as landes annallied and wadset under reversion, the profites quhairof, “ computantur in “ fortem,” that is, ar compted and reckoned within the stok. Swa that the samin being payed in sik quantitie as extendis and is equivalent to the quantitie of the stocke and principall summe; thereby the principall summe is esteemed as compted and payed, quhilk is called “ Mortuum vadium.” “ Bot now the contrair is maist communlie used in the practique of wadsettes and alienation of landes under reversion; and be the aulde law of this realme is called ocker and usurie, and zit to be the samin, was permitted and tolerated. Lib. 3. c. 6. Quhidder the commoun forme of wadsetting of lands now used under reversion, is leasum or unleasum, “ Vid. Jas. L. in cunctos populos. C. “ de summa Trinitate. Et Ches. in Consuetud. Burgund. Rub. 5. § 1. 2.” In auld times, I finde that quhen landes war wadset, “ nomine pignoris,” or “ ad “ immobile vadium,” the profites and rentes thereof were given and disposed be “ the annalier to the buyer, for some certaine reasonable causes; sik as “ pro “ consilio, vel auxilio impenso, vel impendendo;” to the effect, that as the buyer bruikis the landis, “ ex dispositione legis,” swa he micht have richt to the profites thereof, et pacto “ et conventione hominis.” Vid. Reversion. Vid. Sterlingus. Vid. Mortgage.

VADIARE “ duellum. lib. 4. c. 2. A vadii datione,” to enact battell, as in the English lawes, be given of pledges, baith bee the persewer and defender, before the justice and his de putes. The persewer is said, “ vadiare “ duellum;” quhen after leave asked and obtained from the King, hee offeris to proove in plaine field all to be trew quhilk he affirmis; and to that effect, offeris ane wad or pledge; and the defender is understand to “ vadiare duellum,” quhen he denyis all quhilk is spoken bee the persewer, and affirmis the samin to be false and untrue; and thereto offeris his bodie to fight with him, and ane wadde or pledge to that effect. “ De judic. c. 61. c. 86. Moli- “ nzus. stil. cur. Par. part. 1. c. 16. Et author tractatus de Carona, Appellatus “ (inquit) defendet latrocinium, feloniam, et totum factum per patriam, vel

“ per corpus suum, secundum electionem suam, prout curia consideraverit, aut
 “ vardaverit. Si autem elegerit se defendere per corpus suum; vadietur inter
 “ eos duellum. Et appellatus det Vadium defendendi, et appellans det Vadium
 “ disrationandi.” Bot Philippus Pulcher, King of France, discharged all singular
 combattles, and all finding of pledges thereanent, “ Molinæus, D. part. 1. c. 10.
 “ de duello.” In this realme, the appealer and defender castis their glooves till
 other; quhilk representis the finding of the pledge.

VAGABUND, is called properlie, ane quha hes na certaine dwelling place.
 “ Guido Papæ quæst. 202. Per Gl. 1. et Bart. l. § 1. Prætor. ff. de damno in-
 “ fecto.” Quhilk is very speciallie declared in the act of Parliament. Ja. 6,
 p. 6. 20. Octob. c. 74.

VARDA, ane French word, “ Garde,” custodie or keiping: For we use the
 letter W. quhair the Frenchmen uses the letter G. As wardaine for Gardaine,
 Warderob for Garderobe, Warrenne for Garenne. And the warde custodie,
 and keiping of the aire, haldand his landes be service of warde and relieve,
 perteinis to his immediate superiour, quhilk is conforme to the laws of “ Nor-
 “ mandie, Lib. 5. c. 10.” Quhair-anent thir rules after following suld be
 observed, and worthie to be noted. The ward and custodie of lands, halden The ward
 be service of warde and relieve, pertaining to an aire, being “ minor,” and of perteinis to
 lesse age, aucht and suld perteine to the Over-lord and superiour of the saides the superi-
 landes, quha within the time of the warde, may present Ecclesiastical persones our.
 to Kirkes vaikand; suld susteine honestlie the aire; and suld nocht onelie
 pay the debtes auchtand be the defunct, but also aske and crave all debts
 auchtand to the defunct, or to the aire, and persew and defend all actiones
 competent to him; bot he may nocht destroy nor annalie ony part of the
 landes. “ Lib. 2. cap. Plenam 42. c. Restituerit, 44. vid. Relevium. vid.
 “ Hawbert.

Touching the custodie and keeping of the person of the aire of ward landes, The keip-
 or of ony uther landes, or quhatsumever maill or femaill, gotten or borne in ing of the
 lauchfull marriage, the samin perteinis to the mother, after the decease of the bairnes per-
 father, until the bairne be of the age of seven zeires compleit, conform to the teinis to the
 mother. mother.
 commoun practique of this realme, and the civill law. “ L. 1. et Tot. Tit.
 “ ff. ubi Pupil. educar. debeat.”

For be the law of this realme, grounded upon the Clemacterick zeires of Three
 “ Septenarius et Ternarius,” that is, of seven and three zeires, there is three kindes of
 kindes of age. The first is of seven zeires, during the quhilk time the bairnes age.
 are in custodie of their parentes. The second is of fourteene zeires, within
 the quhilk it is not leasum to marie. The third is of twentie ane zeires; af-
 ter the quhilk time, ane aire may enter to his landes, annalie and dispone the
 samin as he pleasis: And before the quhilk time na person may be indited
 to the justice aire, or accused of life and lim. “ I. eg. Forest. cap. Nota quod,
 “ 15.”

The keiping
of the aire
pertainis to
the King.

The keiping of the aire, being "Minor," haldand landes of the King, pertainis to him allanerlie, albeit the said aire have other superiours of uther warde landes, elder and prior in time to the King: "Quia rex nullum potest habere parem, multo minus superiorem in suo regno." Bot gif ane aire haldis landes "nomine Burgagij" of the King, and uther landes "nomine wardae et relev" of another superiour, prior or posterior to the King, the custodie and keiping of the said aire pertainis not to the King, bot to the said superiour. "Quia ratione Burgagii Dominus Rex non præfertur alijs Dominis capitalibus in custodia. Lib. 2. c. Notandum, 45."

The keiping
of the aire
pertainis to
his superi-
our.

After the outrunning of the seven zeires, and the aire beand of that age haldand landes of warde of ane superiour, and having na landes be reason of warde of the King, the superiour suld be preferred anent the keiping of the person of the aire, to the mother, gud-chir, tutour, zea to the King himselfe, and all uther persones. The saxteenth of Julij, ane thowsand, five hundreth, threttie twa. "Penult." Julij, ane thowsand, five hundreth, threttie twa zeirs. The abbot of "Abirbrothok contrair Marioun Forbes." Twenty aucht of Julij, ane thousaud, five hundreth, twenty nine zeirs. "James Sandieland of Calder, contrair Edward Sinclair."

The eldest
superiour is
preferred to
all uthers.

The custodie and keiping of the person of ane aire, haveand landes halden of diverse superiours, bee warde and relieve, pertainis to the eldest superiour, to quhome the first homage was made, or of quhome hee hes the eldest and first infestment, or forme of halding. For al-be-it ilke ane of the superiours hes the warde of the landes halden of himselfe. Zit concerning the keiping of the person of the aire, the principall and eldest superiour is preferred to all utheris. "Lib. 2. c. Restituere, 44."

The keiping of the aire havand lands blenche, or in few ferme, and also ward lands, pertainis to the superiour, be reason of the warde, and not to the tutor, havand intromission with his blenche, or few-lands. "28. Januar. Patrick Hepburne contrair Elizabeth Ker."

The superi-
our is pre-
ferred to the
tutor.

Gif the superiour, havand the richt and title to the warde and mariage of ane aire, disponis the warde to ane donatar, and the mariage to ane uther, the donatar to the marriage allenerlie suld be preferred in keiping of the persone of the said "Minor," to the uther donatar of the ward, and all uthers. "Quia jus maritagij est personale et sequitur personam." The

The keiping
of the aire
followis the
richt of the
marriage.

keiping of the aire suld never be committed to him, quha may claime or claimis ony richt of his landes and heretage; or may immediately succede after him thereto. "Lib. 2. c. hæredes, 47. hac enim ratione illi posset

The keip-
ing of the
aire suld not
be given to
his appear-
and aire.

"præberi occasio captandæ mortis ipsius hæredis, quod est periculosum et impium." Be the lawes of this realm, the aire mail, and all his lands halden ward, ar within ward and keiping of his superiour, until he be of the age of xxj. zeiris. And the aire femail, until she be of the age of xiiij. zeirs. "M. p.

The end of
the wards.

"3. c. 5. lib. 2. c. 39. de judic. c. 64. c. 121." Because the landes pertainig to the aire maill ar subject to the King, or uther superiour, be service, quhilk the "Minor," be reason of his les age and zouth-head, cannot do. And there-

fore the King or superiour, wantand the service, hes recours to the land, that he may be served be the profitis thereof, takin up to his awin use ; or be ony person to quhome he pleasis to dispone the samin, until his vassal be of perfite age, and able to serve. And the aire femail is in the ward and keiping of hir superiour, until sche be fourteene zeirs of age, as said is : for suppose ane woman of twelve zeirs of age, be the civill lawe, may marrie ane husband, zit, be the lawe of this realme, she may nocht marie until she be fourteene zeires compleit ; at the quhilk time, she may lauchfully marie, with consent of her superiour. " Lib. 2. cap. Mulier 48. cap. in custodiis, 90." And therefore sche being subject to her husband, it is not reason sche suld be also subject to the warde of her superiour, and consequently under twa wardes, and twa sindrie severall powers. Mairover, sche being married, with consent of her over-lord, her husband may doe sik service as suld be done to him by the possessour of the landes, quhilk is conforme to that quhilk is written by Doct. " Thomas Smith," of the commoun weil of England. " Lib. 3. c. 5. c. 8."

VARDA " Curia, quoniam attach. c. ubi aliqua, 10. c. in omni. 18. c. nullus, " 20." The interloquutor or decreet of the court ; " Curia dicitur vardare, " considerare, pronunciare," in this forme. The Court counselled and advised. And I. N. Soyttour of it, be their informationes sayeth, that this court counselles, and I award, that N is in ane default for his absence this day. The like forme is used in the daily pratique, quhen the judge or clerk, be the mouth of the officiar or dempster, decernis and adjudgis onie person to be in ane unlaw, for absence or any uther cause. And " lib. 2. c." that quhilk is called " veredictum assisae," in the samin place, " in libro Carbreith," is called Veredictum. the waird, veredite, or deliverance of the assise.

VARENNA, ane French word, ane " Garenne ;" that is, ane place quhilk is dyked and inclosed for beastes, cunnings, or uthers, " quo. attach. Cap. 29. " Mod. Ten. cur. Cap. 21." In Latine " Paradisus." And the keiper of ane Paradisus, cunningair or cunnings is called an " Garenter, infeodatus in liberam varen- " nam," is nocht meikle different from infestment, " in liberam forestam." The quhilk kinde of infestment of auld is given to the Laird of " Rosling," his predicessoures, of the barronie of " Pechtland."

WARE, " wair" of the sea, ane word used in sindrie infestments, in Latine " alga maris." As in the Latine proverb, " abjecta vilior alga." He quha is infest therewith may stop and make impediment to all uther persones, als weil within the floud marke, as without the samin, to gather wair, for mucking and guding of their lands. Or to gather wilkes, cockles, lempers, mussels, sandeilles, small fish, or baite, upon the sand or craiges foreanent his landes, 24. Maij. 1549. The town of " Carrail, contrar Grissel Meldrum." Utherwaies, gif ony person be nocht infest with sik priviledge, he may na

Varech.

waies forbid, trouble, or molest the King, or onie of his lieges, to doe the premisses : Or to win staines, quarrel, or to exerce onie uther industrie to their awin profite and commoditie, within the floud marke of the sea, “ quia “ usus maris est communis omnium. 29. Julij. 1500. The King contrar the “ laird of Seafeild.” “ Ware” cummis fra an auld French word “ varech,” used in the lawes of Normandie, “ lib. c. ult ” Quhilk signifies onie gudes or geare casten out by the sea to the land, quhilk properlie we call the wrak of the sea.

Valvassores
minores.
Valvassini
milites.
Subvassores.

VASSALUS “ quasi bassallus, inferior socius.” From the French “ Bas,” as “ plus Bas,” in Latine “ inferior.” And the Dutch word “ Gesel,” in Latine “ socius.” For the vassal is inferiour to his master, because he suld serve and reverence him. And zit he is in ane manner companion to him, because ilk ane of them is mutuallie oblished till uthers. “ Vid. affidatio et Cuia. lib. 1. “ de feud.” writes that “ leudes leodes, fideles, homines nostri, feudatarij, ministeriales, beneficiarii, beneficiati, vassalli,” almost signifies ane thing. And “ vassallus,” in Latine is “ cliens.” Because sik relation is betwixt “ dominus “ et vassalus” as is betuixt “ patronus” and “ cliens.” Molinaeus in stil cur. p. c. 16. page 48. Albeit “ Cuiacius” affirmis the samin to be monie wayis different. And ane bas infestment is quhen the vassal annalies his landes, halden of himselfe and his aires, quhilk is ane inferiour, private, or subalterne infestmente. In the lawes of the fewes “ vassalus” is called “ fidelis, quia fidelitatem jurat,” he suld swear to be faithfull and trew to his master. Amanges vassalles, the first place of dignitie is given to them quha are “ Duces, Marchiones, Comites,” and are called “ Capitanei Regni.” The second is granted to barrons and uthers of like rank and estate. And are called “ valvasores “ maiores.” The third of them, quha ar called gentilmen, or nobles, haldand of barrons, quha likewise may have under them vassalles, also gentilmen. For ane gentilman may halde of ane uther. And sik vassalles haldand in chiefe of barronnes, ar called “ Valvasores minores.” And they quha haldis their landes of them, are called “ Vassalli, valvassini seu minimi valvasores. “ Lib. 1. de feud. Tit. de natura feudi, § 1.” Bot in the lawes of this realme, they quha haldis of barrones ar called “ milites,” and they quha haldis of them are called “ subvassores, vid. Amerciamentum, vid. Baro, et Iacob. Cuiacium. “ lib. 2. de feud. Tit. de nominibus vassallorum.”

WAIFE beast, “ pecus vel animal aberrans,” quhilk wanders and wavers without ane knawen maister, quhilk being found be onie man, within his awin boundes, he suld cause the samin to be proclaimed diverse and sindrie times upon mercat dayes, at the paroche kirk, and within the Schireffedome; utherwaies, gif he detainis the samin, he may be accused for thieft therefor. And it is leasum to the awner of the beast to repeate and challenge the samin within zeir and daie. “ Quon. attach. c. eschetae. 30. vid. Toscheoderach.” In the lawes of France, it is called “ espave, quo significatur omne illud quod

oberrat, Chess. in consuet. Burgund. Rubric, l § 1. verb. Espaves." In Latine, Espaves.
 " res pro derelicto habita. l. falsus 44. ff. de furt."

WECHTES, measures, and diverse kindes thereof. " Vid. Serplaith."
 Reade likewaies " assisam regis David, De ponderibus et mensuris." Ja. 1. p.
 4. c. 68, 69, 70. Ja. 1. p. 3. c. 57, 58. Ja. 6. p. 11. c. vlt.

VENYSOUN, ane worde used in infestmentes, " a venando seu venatione,"
 and likewaies commonlie used in the lawes of England, and signifies licence
 and power to hunt, take, and slay, of the Kingis venison within his Parkes
 and Forrests. Quhilk utherwaies is nocht leasum, bot is sharplie punished
 with ane grievous fyne, or be banishment or prison. " Leg. forest. c. 91."
 Quhilk is conforme to the lawes of England. " Anno, 9. Hen. 2. c. 10."
 Bot be the disposition of the Forrest lawes, it is leasum to ane Erle, Bishop,
 or Barrone, command or returnand throw the Kingis Forrest, at his com-
 mand, to take ane or twa beastes, be the sight of the forrester, gif he be
 present; and utherwaies he sall blow ane horne, that he appeare nocht to
 take the samin thefteouslie. " Leg. forest. c. 90."

VERB, vert, from the Latine " veride; ane worde used in Charters and
 Infestments, and also in the English laws, quhair it is called Grenehue, and Grenehue.
 signifies power to cut greene trees or wood. And being committed be them
 quha has nocht power to doe the samine, is punished be the foresters, or
 vierders, quha are called " Viridarij," in the lawes of Normandie and England. Viridarij.
 Be the auld law of this realme, all forrestes commonly pertained to the
 King; and the right of Forestarie was given and disposed in thir wordes,
 " in liberam forestam," as is expounded in the word " Foresta." And ane of
 the priviledges or liberties, that is " potestas secandi," licence to hew or cutte
 greene wood, was granted be the King be infestment and disposition con-
 teinand " Verd." Quhilk libertie the King may grante within his hail
 forest, or onie part thereof, to onie person for fewell, or fyre, bigging, or
 for onie uther particular use; quhilk person may nocht abuse the said forest
 or wood, after his awen appetite and will, bot at the sight and discreation
 of the forester, and uther officiares; or according to the forme and mauner
 set down and limitate in his infestment and gift, as writis " John Pappon,
 " lib. 4. Tit. 3."

Secondle, this word, " verd," may be taken for power and licence of
 pasturage within the Kingis forrest, granted to him quha is infest therewith,
 quhilk in the English lawes is called the commoun of herbage, and of uther
 thingis in the Kingis forrest, pertaining to them quha are accustamate to
 have the samin. " Cart. de Forest. c. 1. Mag. Cart. anno 9. Henr. 3. c. 8."
 And iustiment, herbage, " agistamentum et herbagium," in Latine " jus
 " pascendi pecoris," is quhair ane tenent hes right given to him of the

feeding, grassing, or pastouring of his cattel within ane park or onie uther ground inclosed.

VEREDICTUM “ assisae. Vid. Proporcitas. Vid. Verda.”

VERGELT, ane “ Saxon” or Dutch word, from “ ver, id est, virvel homo, “ et Celt. pecunia sive compensatio,” as “ vergelt furis” is 30 kye. and ane “ quoyach, lib. 4. c. de unoquoque, 17 or 33 kye. Stat. Alex. c. de unoquoque, 34.”

VILLENAGIUM, “ a villano,” sklaverie or servitude. “ Lib. 2. c. Consequenter. 13. Vid. Bondagium.”

VISNETUM, from the French word “ voisin,” nichtbour, “ quasi voisin” or “ vicinetum,” from “ vicinus,” ane quha dwellis near unto ane uther, or in the foure halves about, from the quhilk cummis the French worde used in the English lawe, “ vicinage ;” and in the lawes of this realme, “ assisa de vicinetos,” is ane assise of nichtbours, or of the four halves about. “ Vid. Assisa.”

WHITSONDAYES fet. Ia. 2. p. 14. c. or “ Whitsondayes” making. Ia. 2. In the samin par. c. 50. Utherwaies called “ Whitsondayes styles.” Quhilkis were certeine constitutions and statutes quhilkis freeholders, baith spirituall and temporall, and speciallie conventes of Abbayes, and religious places, made betwixt them and their tennentes before “ Whitsondaie,” for service to be done to them, and better labouring of their landes, and payment of their dewtie.

UNLAW.—“ Vide Amerciamentium.—Vide Tort.”

UNCTUM “ Porcorum,” swines seame or fatnes. Leg. burg. c. si quis scienter, 71. Ab ungendo, because it is profitable for unctiones and smearing.

VOTH signifies out-lawrie, “ utlagium.” And in our auld Scottish language ane “ vothman” is ane outlaw, or ane fugitive fra the lawes. Mair-over “ vouth” signifies persued, calling, or accusation, from “ voucher, id est “ vocare,” used in the auld French and English lawes.

WRANG “ et” unlaw, “ Vide Tort.” To denie wrang and unlaw, is quhill the defender denies that quhilk is objected to him, or quhairof he is accused, and zit confesses that he hes done utherwaise then he aucht to doe, and swa hes not done his deuty, for the quhilk he is reddie to make amendes and satisfie the partie offended. “ Leg. Burg. cap. 101.”

WREK of the sea, ane worde specified in the lawes and sindrie infestmentes, quhilk signifies power, libertie, and prerogative, competent to the King, or to onie person to quhom the samin is granted be him bee infestment, or onie uther disposition, to intromet and uptake sik gudes and geare as ar schip-broken, or fallis to him by escheite of the sea. Quhilk libertie is als competent and profitable to him quha is infest with wreck, as it micht be to the King himselve, givar thereof, "*quia wracta pertinens ad dominum regem et wracta competens vassallo, ex donatione regis pari jure aestimantur. Leg. forest. c. inter antiqua, 56.*" And in the lawes of England, "*anno 3. Edwa. I. c. 4.*" concerning wreck of the sea: It is statute, that where an man, an dog, or an cat, escapes quick out of the schip, that sik ship or barg, nor na thing within her, sal be adjudged wreck; bot the gudes sal be saved and keiped be the sicht of the Schireffe, coroner, or the Kingis baillie, and delivered into the hands of sik as are of the towne quhair the gudes were fund; swa that, gif onie crave the gudes within ane zeir and ane daye, after prufe that they were his awin, they sal be restored to him without delaie; and utherwaies they sall remaine to the King. And the schireffes, coroners, and baillies of the town, intromettoures therewith, sal be answerable therefor to the Kingis officiares; and quhair wreck belangis to an uther, he sall have it in maner abone expremed. And quhasoever dois utherwaies, and is attayne or convict thereof, he sal be imprisoned, and pay ane fine arbitrall to the King, and the damage to the partie. Siklike, be the lawes of England, the King suld have the wreck or escheit of the sea throwout the realme, whailes and great sturgeons taken in the sea, or elsequhair within the realme, except in certaine places priviledged be the King. "*Anno 17 Edward II. c. 11.*"

VTLAGIUM, "*vel vtlagatium,*" outlawrie, rebellion, disobedience to the lawes, banishment, or forfaitor. *Ja. II. p. 6. c. 30.* For gif the King restore "*ex gratia*" an man that is outlawed or forefalted, he thereby recovers nocht his landes, bot by the gude will of his overlord, "*quia forisfacta et utlagationem D. rex damnatis solet remittere: nec tamen aliena jura quaerit nec potest infringere, Lib. 2. c. forisfactum. 55. de iudicib. c. si per legem*" "*149.*"

Y

YBVRPANANSECA. It appears to be like that quhilk is called the law of Birdingsek, for in sum auld authentic buikes it is writte, "*Lib. 4. c. 14. yburpan insec. h. e. De furto vituli, vel arietis vel quantum cibi quis pro-tare potest super dorsum suum, curia non est tenenda.*" Sum-affirmis, in the Gascoin language, "*Pana*" to signify "*furari,*" to steill, and "*panadour,*"

T

to be ane thief, and it appears weill, "Seca," signifies ane seck. In Latine "secus," quhilk word is commonlie used in all tungen and languages amang all people and nationes.

Z

ZARDE. Ja. 1. p. 7. c. 99, is an kind of measure commonlie used in England, nocht meikle different from our eine. An zairde of land, "virgata terrae," in the Britton lawes, is ane measure of land, quilk in diverse places is diverse, sumtimes of 20 aikers, sumtimes of 29, and sumtimes of 30 aikers.

ZELDE, ane gift or donation.—Vide Herrezelde."

ZEMSEL of ane castell, the custodie and keiping of ane castell. "Leg. burg. c. 3." "For zeme, in our auld language "is to obscrue and keepe, as quhen in time of singular battel, they quha standis by and behaldes, ar commanded to keepe, and zeme the time of the derenzie, their weapons fra the handes of the appealer and defendour: "In lib. feud." it is called "feodum Guardie," for "Guardia," in Latine, "custodia, et Guardiani custodes," to quhome castelles and territories of landes ar committed in keiping, quhome we call wairdanis, as writes the interpretoures of the fewes and speciallie "Zasius de feudis. par. 12. Nu. 7." And in this realme landes annuel-rents or dewties, given for keiping of castelles, are called "castel-wardis."

FINIS.

Alas. Smellie, Printer.